

THE ANNOTATED
HINDU CRIMINAL COURT
HANDBOOK

BY
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INDEX OF CASES,' 'THE INDIAN EVIDENCE ACT,' 'PRINCIPLES
AND PRACTICE OF INJUNCTIONS,' 'THE LAW OF RECEIVERS,'
ETC., ETC.

VOL. I

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PREFACE TO THE FIFTH EDITION.

A few new Acts have been added in this edition. The sections of the Acts have been printed in bold types. All the amendments made by the Government of India (Adaptation of Laws) Order, 1937, and the Government of Burma (Adaptation of Laws) Order, 1937, as well as other amendments by different enactments of the Legislature passed till September, 1938, have been incorporated in the texts of the Acts and references to rulings have been carefully checked and brought uptodate. An addenda containing the Amending Acts which were in their passage through the Legislature when the book was in the press and promulgated since then is given with the book. The three major Acts in the Second Volume are carefully revised and the Indian Penal Code is entirely re-written and enlarged. I trust and sincerely hope that the profession will find this edition much more useful than its predecessors.

N D. BASU.

KONNAGAR,
31st October, 1938.

PREFACE TO THE FOURTH EDITION

FOR enhancing the utility of the publication I have added 42 new Acts in this edition. All the amendments up to the date of the publication have been incorporated and new laws have been brought up to June, 1935. The three major Acts in Vol II have been thoroughly annotated. The size of the volumes have been changed in deference to the wishes of my readers. Thus the volume of the book has been increased by more than 50 p. e. But I have kept the price of the book the same. I shall deem my labour amply rewarded if it proves of any service to the busy practitioners and ever busy judiciary.

N D BASU

KONNAGAR,
30th June, 1935

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The Annotated Indian Criminal Court Hand-Book

VOL I

THE INDIAN* AIRCRAFT ACT.

ACT NO. XXII OF 1934

Enacted by the Government of India on the 19th July 1934

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An act to make better provision for the control of the manufacture, possession use, operation sale import and export of aircraft

WHEREAS it is expedient to make better provision for the control of the manufacture, possession, use, operation sale, import and export of aircraft, It is hereby enacted as follows —

Notes — Aerial navigation in British India is at present governed by the Indian national Convention of 27 countries and of encouraging To this convention ting to international international commi nulation of rules for and so forth This) convention which contain the detailed rules to be observed by the aircraft of all signatory states and by all aircraft when within the borders of those states For some years past the inadequacy of

* In British Burma this Act is named as Burma Aircraft Act — title Adaptation o Law on separation of Burma

to meet modern developments, to enable Government to give full effect to the provisions of the international convention and its annexes and to provide for certain other matters on which legislation has become necessary'—*Statement of Objects and Reasons*

Short title and extent

*1. (1) This Act may be called "the Indian Aircraft Act, 1934"

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

Definition

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "aircraft" means any machine which can derive support in the atmosphere from reactions of the air, and includes balloons whether fixed or free, airships, kites, gliders and flying machines,

(2) "aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers, and other structures thereon or appertaining thereto,

(3) "import" means bringing into "British India,"† and

(4) "export" means taking out of British India

3 The "Central Government"‡ may, by notification in the

Power of Central Government; to exempt certain aircraft

"official Gazette"§ exempt from the provisions of this Act and of the rules made thereunder, or from any of such provisions, any aircraft or class of aircraft and any person or class of persons, or may direct that such provisions shall apply to such aircraft or persons subject to such modifications as may be specified in the notification

4 The "Central Government"‡ may, by notification in the

Power of "Central Government"‡ to make rules to implement the Convention of 1919

"official Gazette"§ make such rules as appear to "it"¶ to be necessary for carrying out the Convention relating to the regulation of Aerial Navigation signed at Paris, October 13, 1919, with Additional Protocol, signed at Paris, May 1, 1920, and any amendment which may be made thereto under the provisions of Article 34 thereof

5 (1) The "Central Government"‡ may, by notification in the

Power of "Central Government"‡ to make rules

or class of aircraft

"official Gazette"§ make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft

† by the following section 1 This Act may be the Government of Burma (Adaptation of British India have been substituted by the words

Council have been substituted by the words 1937 in British Burma for the words 'Central Order of 1937'

‡ been substituted by the words in Burma the same words have 1937

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the authorities by which any of the powers conferred by or under this Act are to be exercised

(b) the licensing inspection and regulation of aerodromes, the conditions under which aerodromes may be maintained and the fees which may be charged thereat, and the prohibition or regulation of the use of unlicensed aerodromes

(c) the inspection and control of the manufacture, repair and maintenance of aircraft and of places where aircraft are being manufactured, repaired or kept,

(d) the registration and marking of aircraft,

(e) the conditions under which aircraft may be flown, or may carry passengers mails or goods, or may be used for industrial purposes and the certificates, licences or documents to be carried by aircraft

(f) the inspection of aircraft for the purpose of enforcing the provisions of this Act and the rules thereunder, and the facilities to be provided for such inspection

(g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft,

(h) the air-routes by which and the conditions under which aircraft may enter or leave British India, or may fly over British India, and the places at which aircraft shall land,

(i) the prohibition of flight by aircraft over any specified area, either absolutely or at specified times or subject to specified conditions and exceptions,

(j) the supply, supervision and control of air-route beacons aerodrome lights and lights at or in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes,

(k) the signals to be used for purposes of communication by or to aircraft and the apparatus to be employed in signalling,

(l) the prohibition and regulation of the carriage in aircraft of any specified article or substance,

(m) the measures to be taken and the equipment to be carried for the purpose of ensuring the safety of life,

(n) the issue and maintenance of log-books,

(o) the manner and conditions of the issue or renewal of any licence or certificate under the Act or the rules, the examinations and tests to be undergone in connection therewith, the form, custody, production endorsement, cancellation, suspension or surrender of such licence or certificate or of any log-book

(p) the fees to be charged in connection with any inspection, examination test, certificate or licence, made, issued or renewed under this Act,

(q) the recognition for the purposes of this Act of licences and certificates issued elsewhere than in British India relating to or to the qualifications of persons employed in the operation, manufacture repair or maintenance of aircraft and

(v) any matter subsidiary or incidental to the matters referred to in this sub-section

6 (1) If the "Central Government" * is of opinion that in the interests of the public safety or tranquillity the issue of all or any of the following orders is expedient, he may, by notification in the 'official Gazette' †—

Power of 'Central Government' * to make orders in emergency

(a) cancel or suspend, either absolutely or subject to such conditions as "it" ‡ may think fit to specify in the order, all or any licences or certificates issued under this Act

(b) prohibit, either absolutely or subject to such conditions as "it" ‡ may think fit to specify in the order, or regulate in such manner as may be contained in the order, the flight of all or any aircraft or class of aircraft over the whole or any portion of 'British India' §

(c) prohibit either absolutely or conditionally, or regulate the erection, maintenance or use of any aerodrome, aircraft factory, flying-school or club or place where aircraft are manufactured, repaired or kept, or any class or description thereof, and

(d) direct that any aircraft or class of aircraft or any aerodrome, aircraft factory, flying-school or club, or place where aircraft are manufactured, repaired or kept, together with any machinery, plant, material or things used for the operation, manufacture, repair or maintenance of aircraft shall be delivered, either forthwith or within a specified time, to such authority and in such manner as he may specify in the order, to be at the disposal of His Majesty for the public service.

(2) Any person who suffers direct injury or loss by reason of any order made under clause (c) or clause (d) of sub-section (1) shall be paid such compensation as may be determined by such authority as the "Central Government" * may appoint in this behalf

(3) The "Central Government" * may authorise such steps to be taken to secure compliance with any order made under sub-section (1) as appear to him to be necessary

(4) Whoever knowingly disobeys, or fails to comply with, or does any act in contravention of an order made under sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both and the Court by which he is convicted may direct that the aircraft or thing (if any) in respect of which the offence has been committed, or any part of such thing, shall be forfeited to His Majesty

* The words 'Governor General in Council' in the original Act have been replaced by the words 'Central Government'.

he words
official

§
Order of 1934

India' read 'British Burma' (vide G. B.

7 (1) The 'Central Government * may, by notification in the 'official Gazette' † make rules providing for the investigation of any accident arising out of or in the course of air navigation in or over 'British India ‡

Power of Central Government * to make rules for investigation of accidents

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) require notice to be given of any accident in such manner and by such person as may be prescribed

(b) apply for the purposes of such investigation, either with or without modification, the provisions of any law for the time being in force relating to the investigation of accidents

(c) prohibit pending investigation access to or interference with aircraft to which an accident has occurred and authorise any person so far as may be necessary for the purposes of an investigation to have access to, examine, remove take measures for the preservation of or otherwise deal with any such aircraft, and

(d) authorise or require the cancellation, suspension endorsement or surrender of any licence or certificate granted or recognised under this Act when it appears on an investigation that the licence ought to be so dealt with, and provide for the production of any such licence for such purpose

8 (1) Any authority authorised in this behalf by the 'Central Government * may detain any aircraft, if in the opinion of such authority—

Power to detain aircraft

(a) having regard to the nature of an intended flight the flight of such aircraft would involve danger to persons in the aircraft or to any other persons or property or

(b) such detention is necessary to secure compliance with any of the provisions of this Act or the rules applicable to such aircraft; or such detention is necessary to prevent a contravention of any rule made under clause (h) or clause (i) of sub-section (2) of section 5.

(2) The 'Central Government * may, by notification in the 'official Gazette † make rules regulating all matters incidental or subsidiary to the exercise of this power

'8A The "Central Government * may by notification in the 'official Gazette †, make rules for the prevention of danger arising to the public health by the introduction or spread of any infectious or contagious disease from aircraft arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome and in particular and without prejudice

Power of Central Government to make rules for protecting the public health

* The words Governor General in Council has been substituted by the words Central Government by G I Order of 1937 In British Burma for the words Central Government read the word Governor (vide G B Order of 1937)

1e words
official

ide G L

to the generality of this provision may make, with respect to aircraft and aerodromes or any specified aerodromes, rules providing for any of the matters for which rules under sub-clauses (i) to (iii) of clause (p) of sub-section (1) of section 6 of the Indian Ports Act, 1908, may be made with respect to vessels and ports”*

Notes—Under section 6 (1) (p) of the Indian Ports Act 1908 (XX of 1908) Local Governments are empowered to make rules for the prevention of danger arising to public health by the introduction and the spread of any infectious or contagious disease from

9 (1) The provisions of Part VII of the Indian Merchant Shipping Act, 1923,† relating to wreck and salvage shall apply to aircraft on or over the sea or tidal waters as they apply to ships, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services rendered by the aircraft in like manner as the owner of ship

(2) The “Central Government”‡ may, by notification in the ‘official Gazette’§ make such modifications of the said provisions in their application to aircraft as appear necessary or expedient

10 In making any rule under section 5, section 7, section 8 “or section 8 A” ¶ the “Central Government” † may direct that a breach of it shall be punishable with imprisonment for any term not exceeding three months or with fine of any amount not exceeding one thousand rupees, or with both

11 Whoever wilfully flies any aircraft in such a manner as to cause danger to any person or to any property on land or water or in the air shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

12 Whoever abets the commission of any offence under this Act or the rules, or attempts to commit such offence, and in such attempt does any act towards the commission of the offence, shall be liable to the punishment provided for the offence

13. Where any person is convicted of an offence punishable under any rule made under clause (i) or clause (i) of sub-section (2) of section 5, the Court by which he is convicted may direct

* Inserted by Act VII of 1936

† XXI of 1923

‡ The words “Governor General in Council”

§ Central Government by G. I. Order of 1937. In British Burma for the words “Central Government” read “Governor General in Council”

¶ by G.

(i) do

†

that the aircraft or article or substance, as the case may be, in respect of which the offence has been committed, shall be forfeited to His Majesty

14 Any power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication for a period of not less than three months

Rules to be made after publication

15 The provisions of section 42 of the Indian Patents and Designs Act 1911* shall apply to the use of an invention on any aircraft not registered in British India † and in like manner as they apply to the use of an invention in a foreign vessel

Use of patented invention on aircraft not required in British India

16 The 'Central Government' ‡ may, by notification in the 'official Gazette' § declare that any or all of the provisions of the Sea Customs Act, 1878 || shall, with such modifications and adaptations as may be specified in the notification, apply to the import and export of goods by air

Power to apply customs procedure

17 No suit shall be brought in any Civil Court in respect of trespass or in respect of nuisance by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather and all the circumstances of the case is reasonable, or by reason only of the ordinary incidents of such flight

Saving for acts done in good faith under the Act

18 No suit prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to

be done under this Act

19 (1) Nothing in this Act or in any order or rule made thereunder shall apply to or in respect of any aircraft belonging to or exclusively employed in His Majesty's naval, military or air forces, or to any person in such forces employed in connection with such aircraft

Saving of application of Act

(2) Nothing in this Act or in any order or rule made thereunder shall apply to or in respect of any light-house to which the Indian Light-house Act, 1927 ¶ applies or prejudice or affect any right or power exercisable by any authority under that Act

20 [The Indian Aircraft Act 1911** the entry relating thereto in the First Schedule to the Repealing and Amending Act, 1914 †† and the Indian Aircraft (Amendment) Act, 1914 ‡‡ are hereby repealed] §§

Repeals

* Act II of 1911

† In British Burma read British Burma (vide G. B. Order of 1937)

‡ In British India the words Governor General in Council have been substituted for the words Secretary of State (vide G. B. Order of 1937. In British Burma for the Order of 1937)

§ have been substituted by the words
h Burma the words have been

|| VIII of 1878

* XV of 1927

** XVII of 1911

†† X of 1914

‡‡ XVI of 1914

§§ This section has been repealed in British India by Repealing Act of 1938 (I of 1938) but has not been repealed in British Burma

THE INDIAN AIR FORCE ACT

ACT NO. XIV OF 1932.

Received the assent of the Governor-General on the 8th April, 1932

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An Act to provide for the administration and discipline of the Indian Air Force.

WHEREAS it is intended to establish an Indian Air Force ;

AND WHEREAS it is expedient to provide for the administration and discipline of that Force and for purposes connected therewith ; It is hereby enacted as follows :—

... from Cranwell will be arriving in
... of one year's attachment to a unit of
... in Air Unit. Meanwhile, the other
... during by the time
... at point, (i.e., the
... for the discipline
... it does not apply,
... with India".

"(3) Legislation can be undertaken in one of two ways —

(a) By a Bill to apply the British Air Force Act with suitable modifications.

(b) By a self-contained Bill bearing the same general relation to the British Air Force Act as the Indian Army Act bears to the British Army Act.

(4) As regards alternative (a) section 177 of the British Air Force Act gives power to the Legislature of India, or of any of the Dominions or Colonies, to extend or apply all or any of the provisions of the British Army Act to the officers, non-commissioned officers subject to such adaptations, modifications and exceptions as may be specified. The course thus indicated has been carefully considered by the Government of India, who do not, however, propose to adapt it, partly on account of the unsuitability of the British Act to an Indian force, and still more on account of the very complicated nature of the adaptations, modifications and exceptions that would be necessary. The British Air Force Act, which is an adaptation of the British Army Act.

application to India, as far instance, Part III, heading 'Summary and other legal Proce-

But in spite of this, the Bill if required to

would entirely escape amendment, and be merely amended. The Second modified the Army Act into an provisions are merely formal

the sections
thers exten-
1917, which
some of its
to adapt the Air Force Act to both of substance and intricate of a Bill on these lines, would and the desired object namely, to h Acts would not, in point of fact,

be achieved.

to the rank and file. The personnel of the Indian Air Force will very largely be drawn whom some knowledge regard to the Indian ogy of the Indian Penal he Indian Army Act will be t on the English lines ; and it le-s difficulty in following a version of the complicated Air

source Act.

honourable
e material of
The frame-
been adapted as

far as possible but where that Act departs widely from the more modern standards of the Air Force Act the provisions of the latter have been adapted. The provisions in which there is the widest departure from the Indian Army Act are contained in Chapters III and IV on air force offences and punishments. These Chapters have been drafted so as to secure that members of the Indian Air Force will be punishable for any offence with no great severity than the members of the Royal Air Force. —*Statement of Objects and Reasons*

CHAPTER I

PRELIMINARY

Short title and commencement

1 (1) *This Act may be called the Indian Air Force Act, 1932*

(2) It shall come into force on such date as the 'Central Government' * may, by notification in the "official Gazette" † appoint

Notes — This Chapter corresponds to Chapter I of the Indian Army Act with the omission of section 5 and definitions (1) (8) (10) and (11) of section 7 which are inapplicable. —*Statement of Objects and Reasons* This Act is not in force in British Burma

Persons subject to this Act

2 (1) The following persons shall be subject to this Act, namely —

(a) officers and warrant officers of the Indian Air Force,

(b) persons enrolled under this Act,

(c) persons not otherwise subject to military, "naval" ‡ or air force law, who on active service, in camp, on the march, or at any frontier post specified by the "Central Government" * by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the Indian Air Force

(2) Every person who has become subject to this Act under sub-section (1) clause (a) or (b), shall remain so subject until duly discharged or dismissed

3 (1) The "Central Government" * may, by notification, direct that any person or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as officers, warrant officers or non commissioned officers, and may authorise any officer to give a like direction with respect to any such person and to cancel such direction

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer

4 Every person subject to this Act under section 2, sub-section (1) clause (c) shall, for the purposes of this Act, be deemed to be under the command of a commanding officer of certain persons, or detachment (if any) to any corps, unit or detachment, who may for

* The words 'Central Government' have been substituted for the words 'Government of India' in the original Act of 1932

† been substituted for the words "Gazette of India"

the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed

5 (1) Whenever persons subject to this Act are serving whether

Officers to exercise powers in certain cases

within or without India under an officer not subject to this Act, the "Central Government" may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding units, shall, as regards such persons be exercised

(2) The "Central Government" may confer such powers either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think fit

Definitions

6 In this Act, unless there is something repugnant in the subject or context,—

(1) "officer of the Indian Air Force" means a person commissioned, gazetted or in pay as an officer of the Indian Air Force,

(2) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer in the Indian Air Force,

(3) "non-commissioned officer" means a person attested under this Act holding a non-commissioned rank in the Indian Air Force, and includes an acting non-commissioned officer,

(4) "officer" means an officer of any of His Majesty's naval, military or air forces, but does not include a warrant officer or non-commissioned officer,

(5) "airman" means any person subject to this Act other than an officer,

(6) "commanding officer," used in relation to a person subject to this Act, means the officer for the time being in command of the unit or detachment to which such person belongs or is attached,

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, a warrant officer, or non-commissioned officer of any of His Majesty's naval, military or air forces,

(8) "corps" means anybody of the Indian Air Force which is prescribed as a corps for the purposes of all or any of the provisions of this Act,

(9) "unit" means anybody of the Indian Air Force which is prescribed as a unit for the purposes of all or any of the provisions of this Act,

(10) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to naval, military or air force law to act,

* The words 'Central Government' have been substituted for the words 'Governor General in Council' by G. I. Order of 1937

(11) "active service," as applied to a person subject to this Act, means the time during which such person is attached to or forms part of a force which is engaged in operations against an enemy, or is engaged in warlike operations in or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country and includes, in respect of a person subject to this Act attached to or forming part of a force which is about to be or has recently been on such active service, such time as the "Central Government"* may by notification in the "official gazette"† declare to be active service in respect of such force,

(12) 'air force custody' means the arrest or confinement of a person according to the usages of His Majesty's military and air forces, and includes military custody,

(13) "air force reward" includes any gratuity or annuity for long service or good conduct any good conduct pay good service pay or pension, and any other air force pecuniary reward,

(14) "court-martial" means a court-martial held under this Act

(15) "Criminal Court" means a Court of ordinary criminal justice in British India or established elsewhere by the authority of the "Central Government or the Crown Representative" ‡

(16) "offence" means any act or omission made punishable by any law for the time being in force,

(17) 'air force offence' means any act or omission made punishable by this Act,

(18) "civil offence" means an offence which, if committed in British India, would be triable by a Criminal Court, §

(20) "notification" means a notification published in the "official Gazette" ¶

(21) "prescribed" means prescribed by rules made under this Act, and

(22) all words and expression used herein and defined in the Indian Penal Code, and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code

Notes—The definition of Officer of the Indian Air Force confines the term to officers directly commissioned in this force but the definition of officer in (4)

than that of the Indian Army

The definition of superior officer in (7) makes possible the temporary placing of Indian Air Force personnel under the orders of warrant officers and non commissioned officers of any other of His Majesty's naval military or air forces as well as of the Royal Air Force

The definition of active service includes a power on the lines of section 189 of the Air Force Act

The definition of 'air force custody' is designed to allow the authorities of the Indian Air force to use military agencies

* The words "Central Government" have been substituted by C. I. Order of 1937 for the words "Governor General in Council"

† The words "Official Gazette" have been substituted by G. I. Order of 1935 for the

is given its meaning in punishable by any law any offences. In addition offences made punishable civil offences are over are also civil offences offences if committed by

a person subject to this Act (cf clause 58). These two definitions are very important in regard to clause 74—*Statement of Objects and Reasons*

CHAPTER II

ENROLMENT ATTESTATION DISMISSAL DISCHARGE AND REDUCTION

Notes—This Chapter covers Chapters II and III of the Indian Act and part of Chapter IV of the Act. It relates to the ordinary enrolment and discharge of airmen and to the powers of dismissal and reduction which may be used to secure efficiency as distinct from the powers of dismissal and reduction by way of punishment exercised by courts martial.

Clause 9 is new and is a statutory guarantee that all airmen in the Indian Air Force shall be Indians.

Otherwise the Chapter closely follows the Indian model with only the necessary substitution of authorities. The whole scheme of the Chapter differs widely from the corresponding provisions of the Air Force Act but they have found to be suitable to the Indian Army and are more likely to be suitable to the personnel of the Indian Air Force than the elaborate provisions of the Air Force Act. In particular the Bill contemplates a period of probation between enlistment and attestation during which any inefficient recruit may be discharged without formality. It also contemplates an elastic period of service to be determined by rules as with the Indian Army. An airman will be enrolled in the first instance for the prescribed minimum period of service and after completion of this period he will serve on without further enrolment until he is discharged or until he seeks his discharge by giving due notice—*Statement of Objects and Reasons*

7 Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled the enrolling officer shall read and explain to him or cause to be read and explained to him, in his presence the conditions of the service for which he is to be enrolled, and shall put to him the questions set forth in the prescribed form of enrolment and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act record or cause to be recorded his answer to each such question.

8 If, after complying with the provisions of section 7 the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment he shall sign and shall cause the person to sign the enrolment paper and the person shall be then deemed to be enrolled.

9 The enrolling officer shall not cause any person to sign the enrolment paper unless he is satisfied that such person is a subject of His Majesty or of a Prince or Chief in India, and—

- (a) is of unmixed Indian descent or
- (b) if he is of mixed Indian and non-Indian descent, is domiciled in India, or
- (c) if he is of unmixed non-Indian Asiatic descent, is domiciled in India and his father and grandfather were domiciled in India.

Notes — 'We are not satisfied that clause 9 in the Bill as introduced secures the intention underlying it, namely, that the Indian Air Force should be definitely of an Indian character. We have redrafted the clause accordingly' — *Report of the Select Committee*

10 Every person who has for the space of six months been in the receipt of air force pay and been borne on the rolls of any unit shall be deemed to have been duly enrolled, notwithstanding any illegality or irregularity in his enrolment

Notes — This clause as it stood emphasised the disabilities of a person who after an irregular enrolment has served for six months. We have amended the clause so that no emphasis is laid either on disabilities or on privileges — *Report of the Select Committee*

Persons to be attested **11** The following persons shall be attested, namely —

(a) all persons enrolled as combatants,

(b) all other enrolled persons prescribed by the "Central Government"*

12 (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his unit or such portion thereof as may be present, or by any other prescribed person

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, his heirs and successors, and that he will serve in the India Air Force and go wherever he is ordered by air, land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by his signature and by the signature of the officer administering the oath or affirmation.

Notes — We have provided in sub clause (3) that the attestation of an enrolled person shall be authenticated by the signature of the person attested as well as the signature of the attesting officer — *Report of the Select Committee*

Dismissal by Governor General in Council

13 The "Central Government"* may at any time dismiss from the service any person subject to this Act

14 This Air Officer Commanding His Majesty's Air Forces in India, or any prescribed officer, may at any time dismiss from the service any person subject to this Act other than an officer

Dismissal by the Air Officer Commanding or prescribed officer

15 The prescribed authority may, in conformity with any rules prescribed on this behalf, discharge from the service any person subject to this Act

Discharge

* The words 'Central Government' has been substituted for the words "Governor General in Council" by G I Order of 1937.

16 Any enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate setting forth—
 Certificate to person dismissed or discharged

- (a) the authority dismissing or discharging him,
- (b) the cause of his dismissal or discharge, and
- (c) the full period of the service in the Indian Air Force

17 (1) Any enrolled person who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India and requests to be sent to India, shall, before being discharged be sent to India with all convenient speed

(2) Any person subject to this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed

Provided, that where any such person is sentenced to dismissal combined with any other punishment, such other punishment or, in the case of a sentence of imprisonment, a portion of such other punishment, may be inflicted before he is sent to India

18 (1) The Air Officer commanding His Majesty's Air Forces in India or any prescribed officer, may at any time reduce any warrant officer or any non-commissioned officer to a lower grade or to a lower rank or to the ranks, or any airman other than a warrant officer or non-commissioned officer to a lower class in the ranks

(2) The commanding officer or an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer or, if he has no permanent grade above the ranks, to the ranks

CHAPTER III

PUNISHMENTS AND PENAL DEDUCTIONS

post 1 by
and clauses 26

pen military prisoners for about ten years and the present policy is to leave it in abeyance. Prisoners sentenced to transportation serve out their term in rigorous imprisonment. There is no point therefore in retaining this obsolete punishment in the Bill. Again the Indian law has no punishment of penal servitude. It is understood that in England there is little practical difference between penal servitude and imprisonment with

hard labour, and that these two punishments are of the imprisonment in India. In any case there is no choice to replace both penal servitude and imprisonment with the Bill replaces (b) and (c) of both Acts by—

d for a term not less than three years

years

simple for a term not exceeding two

The draft is as close an approximation to the Force Act as may be devised to meet Indian conditions kept under one head (b) for convenience in drafting to imprisonment make no differentiation between the 113 and 114)

(2) The punishment of detention has been introduced in order to avoid the imposition of imprisonment in certain cases with its necessary consequence of dismissal as it may be desirable to punish an offender with some severity and yet retain him in the Indian Air Force

(3) The other punishments—These follow section 43 of the Indian Army Act, with one minor variation of substance in (b) where reprimand or severe reprimand may be awarded to a warrant officer or non-commissioned officer as well as to an officer. This follows section 44(mm) of the Air Force Act

Section 49 of the Indian Army Act which provides for sentences of solitary confinement is omitted. This omission is important and brings the Bill into line in this respect with the Air Force Act.—*Statement of Objects and Reasons*

19 Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say,—

(a) death

(b) imprisonment, which shall be of two degrees, namely —

(i) long imprisonment, which shall be rigorous and for a term not less than three years and not exceeding fourteen years, and

(ii) short imprisonment, which may be rigorous or simple, for a term not exceeding two years,

(c) in the case of airmen, detention for a term not exceeding two years,

(d) dismissal from the service,

(e) in the case of officers and warrant officers' suspension from rank, pay and allowances for a period not exceeding two months,

(f) reduction, in the case of a warrant officer or a non-commissioned officer, to a lower grade, or to a lower rank or to the ranks,

(g) in the case of officers warrant officers and non-commissioned officers, forfeiture or seniority of rank,

(h) in the case of officers, warrant officers and non-commissioned officers, reprimand or severe reprimand —

(i) forfeitures and stoppages as follows, namely —

(i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose,

(ii) forfeiture of any military, 'naval' * or air force decoration or military, 'naval' * or air force reward,

(iii) forfeiture, in the case of a person sentenced to dismissal from the service, of all arrears of pay and allowances due to him at the time of such dismissal,

* The word quoted has been inserted by Act XXV of 1934,

(iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good;

(v) on active service, forfeiture of pay and allowances for a period not exceeding three months

Notes—In regard to sub-clause (iii) of clause (i) we felt uncertain of the precise scope of the words 'and of his public money' and we consider that forfeiture should be confined to arrears of pay and allowance. We have accordingly deleted these words.—*Report of the Select Committee*

20 Where in respect of any offence under this Act there is specified a particular punishment, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment

21. (1) Where any person, subject to this Act and under the rank of warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb

(2) Field punishment shall for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal

22 A sentence of a court-martial may award, in addition to or without any one other punishment, any one or more of the punishments specified in clauses (d), (f), (h) and (i) of section 19

23 A warrant officer or non-commissioned officer sentenced by court-martial to imprisonment, detention, field punishment or dismissal from the service, shall be deemed to be reduced to the ranks

24 When any enrolled person on active service has been sentenced by court-martial to dismissal or to imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be returned to serve in the ranks, and where such person has been sentenced to imprisonment, such service shall be reckoned as part of his term of imprisonment

25 (1) The 'Central Government' * may prescribe the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded

(2) Detention and, in the case of persons subject to this Act on

* The words 'Central Government' have been substituted for the words 'Governor General in Council' by G. O. Order of 1937

active service, any prescribed field punishment may be specified as minor punishments

Provided that—

(a) the term of such detention or field punishment shall not exceed twenty-eight days, and

(b) detention or field punishment shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded was of or above such rank.

(3) The provisions of sections 77, 78 and 79 shall apply to the proceedings of officers empowered to award minor punishments under this section as if such officers were courts martial

Notes—Sub-clause (3) has been extracted Act (reproduced as clauses 77, 78 and 79 of the scope to courts martial) the application of it less likely to be overlooked if this transposition

Deduction from pay and allowance

26 (1) The following penal deductions may be made from the pay and allowances of an officer of the Indian Air Force, that is to say,—

(a) all pay and allowances due to an officer who absents himself without leave or overstays the period for which leave of absence has been granted to him unless a satisfactory explanation has been given to his commanding officer and has been approved by the 'Central Government,' *

(b) any sum required to make good such compensation for any expenses loss damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of offence;

(c) any sum required to make good the pay of any officer or airman which he has unlawfully retained or unlawfully refused to pay,

(d) any sum required to make good any loss, damage or destruction of public or service property which after due investigation, appears to the 'Central Government' * to have been occasioned by any wrongful act or negligence on the part of the officer

(2) The following penal deductions may be made from the pay and allowances of an airman that is to say,—

(a) all pay and allowances for every day, of absence either on desertion or without leave or as a prisoner of war, and for every day of imprisonment or detention awarded by a Criminal Court, a court-martial or an officer exercising authority under section 25, or of field punishment awarded by a court-martial or such officer,

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a Criminal Court or court-martial or on a charge of absence without leave for which he is afterwards awarded imprisonment detention or field punishment by an officer exercising authority under section 25

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attend-

* The words Central Government have been substituted for the word, "Governor General in Council" by G. I. Order of 1937

ing on him to have been caused by an offence under this Act committed by him.

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be prescribed,

(e) all pay and allowances ordered by a court-martial to be suspended or forfeited,

(f) any sum ordered by a court-martial to be stopped,

(g) any sum required to make good such compensation for any expenses caused by him or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, service necessaries, or military decoration, or to any buildings or property, as may be awarded by his commanding officer,

(h) any sum required to pay a fine awarded by a Criminal Court, a court-martial exercising jurisdiction under section 58 or an officer exercising authority under section 25

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (c) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal) exceed in any one month one-half of his pay and allowances for that month

Explanation.—For the purposes of clauses (a) and (b) —

(i) no person shall be treated as absent, imprisoned or detained, unless the absence, imprisonment, or detention has lasted six hours upwards except where the absence prevented the absentee from fulfilling any air force duty which was thereby thrown on some other person

(ii) a period of absence imprisonment, or detention which commences before and ends after midnight may be reckoned as a day,

(iii) the number of days shall be reckoned as from the time when the absence, imprisonment, or detention commences and

(iv) no period of less than twenty-four hours shall be reckoned as more than one day

Notes—Sub clause (1) relating to officers reproduces section 137 of the English Act. Sub clause (2) relating to other ranks follows section 50 of the Indian Army Act except the explanation which follows section 101 (2) of the English Act—*Statement of Objects and Reasons*

27 Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a person

28 Any deduction from pay and allowances authorized by this Act may be remitted in such manner and to such extent and by such authority as may from time to time be prescribed

29 In the case of all persons subject to this Act being prisoners of war, whose pay and allowances have been forfeited under section 26 but in respect of whom a remission has been made under section 28 it shall be lawful, notwithstanding any provision in

any enactment or any rule of law to the contrary, for proper provisions to be made by the prescribed authorities out of such pay and allowances for any dependents of such person, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances

30 The pay of an officer or airman of the Indian Air Force shall be paid without any deduction other than the deductions authorized by this Act or by any other enactment for the time being in force or prescribed by the Central Government *

Unauthorized deductions for
bidden
Notes—Section 30 introduces into the Bill a provision based on section 136 of the English Act. The reference on that section to the Royal warrant is replaced in the Bill by the words prescribed by the Governor General in Council. By this means the Governor General in Council can adopt the provisions of the Royal warrant regarding deductions from pay and so secure equality of treatment between the Royal Air Force and the Indian Air Force.—*Notes on Clauses*

CHAPTER IV

AIR FORCE OFFENCES

Notes—Both the English and the Indian Acts use, in most of the sections on this subject the phrases or such less punishment as in this Act mentioned' and 'on conviction by court martial. The first phrase has been covered generally by a small adjustment of the drafting of clause 20 and the latter phrase by the inclusion of clause 74 (c) and both phrases have accordingly been omitted throughout. The Bill states shortly the maximum punishment which may be imposed, and leaves the question of jurisdiction and the imposition of lesser punishment to the general provisions.—*Notes on Clauses*

Service offences punishable
with death

31 Any person subject to this Act who—

(a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend, or

(b) shamefully casts away his arms, ammunition or tools in the presence of the enemy, or

(c) treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy, or

(d) assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner, or

(e) having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy, or

(f) voluntarily does when on active service any act calculated to imperil the success of His Majesty's Forces or any part thereof, or

(g) treacherously or shamefully causes the capture or destruction by the enemy of any of His Majesty's aircraft, or

(h) treacherously gives any false air signal or alters or interferes with any air signal, or

(i) when ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect, shall be punishable with death.

* The words "Central Government" have been substituted for the words "Governor General in Council" by G. I. Order of 1937.

Notes —Sections 31 to 34 —In the Indian Act offences relating to military service are dealt with in two sections sections 25 and 26 in which the only punishment specified (apart

Service offences punishable with long imprisonment

32 Any person subject to this Act, on active service —

(a) without orders from his superior officer leaves the ranks in order to secure prisoners or horses or on pretence of taking wounded men to the rear, or

(b) without orders from his superior officer wilfully destroys or damages any property, or

(c) is taken prisoner by want of due precaution or through disobedience of orders or wilful neglect of duty, or, having been taken prisoner, fails to rejoin His Majesty's service when able to do so, or

(d) without due authority either holds correspondence with, or gives intelligence or sends a flag of truce to the enemy, or

(e) by word of mouth, or in writing, or by signals, otherwise spreads report calculated to create unnecessary alarm or despondency, or

(f) in action, or previously to going into action uses words calculated to create alarm or despondency, or

(g) negligently causes the capture or destruction by the enemy of any of His Majesty's aircraft or

(h) when ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect or

(i) misbehaves before the enemy in such manner as to show cowardice, shall be punishable with long imprisonment

33 (1) Any person subject to this Act who treacherously makes known the watchword to any person not entitled to receive it, or treacherously gives a watchword different from what he received, shall if he commits the offence

Service offences punishable more severely if committed on active service

on active service, be punishable with death, and, if he commits the offence not on active service, with short imprisonment

(2) Any person subject to this Act who—

(a) without due authority alters or interferes with any air signal, or

(b) forces a safeguard, or

(c) forces or strikes a sentinel, or

(d) breaks into any house or other place in search of plunder, or

(e) being an airman acting as sentinel sleeps or is intoxicated, or

(f) without orders from his superior officer leaves his guard, picket, patrol or post, or

(g) by discharging fire arms, making signals, using words, or by any means whatever, intentionally occasions false alarms, or

(h) being an airman acting as sentinel leaves his post before he is regularly relieved,
shall, if he commits the offence on active service be punishable with long imprisonment and, if he commits the offence not on active service, with short imprisonment

Service offences punishable
with short imprisonment

34 Any person subject to this Act who—

(a) by discharging fire arms, making signals using words or by any means whatever, negligently occasions false alarms or

(b) makes known the watchword to any person not entitled to receive it, or, without good and sufficient cause, gives a watchword different from what he received, or

(c) impedes the provost-marshal or any assistant provost-marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost-marshal, or when called on, refuses to assist in the execution of his duty the provost-marshal, the assistant provost-marshal, or any such officer, non-commissioned officer or other person, or

(d) uses criminal force to or commits an assault on any person bringing provisions or supplies to the forces, or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving, or

(e) irregularly detains or appropriates to his own unit or detachment any provisions or supplies proceeding to the forces, contrary to orders issued in that respect,
shall be punishable with short imprisonment

Mutiny

35 Any person subject to this Act, who—

(a) begins incites, causes or conspires with any other persons to cause any mutiny in any of His Majesty's naval, military or air forces, or

(b) joins in, or, being present, does not use his utmost endeavours to suppress, any such mutiny, or

(c) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny, or of any such conspiracy, does not without delay give information thereof to his commanding or other superior officer,
shall be punishable with death

Notes.—In this clause section 22 (a) (b) and (c) of the Indian Act have been adapted with slight drafting changes.—*Notes on Clauses*

Insubordination punishable
with long imprisonment

36 Any person subject to this Act who—

(a) uses criminal force to or assaults his superior officer, being in the execution of his office, or

(b) disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office,
shall be punishable with long imprisonment

Notes.—Sections 36 to 38.—These reproduce sections 8 to 11 of the English re arranged, on the plan of the preceding clauses according to the degree of

The reasons for adapting the English sections are those already given with reference to clauses 31 to 34 *mutatis mutandis*. The only difference in substance lies in the omission to differentiate between the officer and the airman wherein the Indian Act is followed.—*Notes on Clauses*

Insubordination punishable more severely if committed on active service

37 Any person subject to this Act who—

- (a) uses criminal force to or assaults his superior officer, or
- (b) uses threatening or insubordinate language to his superior officer, or
- (c) disobeys any lawful command given by his superior officer, shall, if he commits the offence on active service, be punishable with long imprisonment, and if he commits the offence not on active service, with short imprisonment

Insulting behaviour punishable with short imprisonment

38 Any person subject to this Act who—

- (a) being concerned in any quarrel affray or disorder refuses to obey any officer (though of inferior rank) who orders him into arrest, or uses criminal force to or assaults any such officer, or
- (b) uses criminal force to or assaults any person whether subject to this Act or not, in whose custody he is placed, whether he is or is not his superior officer, or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge, or
- (d) being an airman, breaks out of barracks, camp or quarters, or
- (e) neglects to obey any general local or other orders (not being orders in the nature of a rule or regulation published for the general information and guidance of the Indian Air Force), shall be punishable with short imprisonment

39 Any person subject to this Act who deserts or attempts to

Desertion

desert the service shall, if he commits the offence when on active service or under orders for active service, be punishable with long imprisonment, and, if he commits the offence under any other circumstances with short imprisonment

Notes.—

which relate paragraph of in the list

the Air Force Act have not been adapted as it would never be used. The crime of among Indian personnel and is not likely to appear

by the omission of clause (b) and by clause 57 and of the last

40 Any person subject to this Act who, when belonging to the

Fraudulent enlistment

Indian Air Force, without having obtained a regular discharge therefrom or otherwise fulfilled the conditions enabling him to enlist, enrol or enter, enrolls himself, or enlists in or enters any other of His Majesty's air forces, or any of His Majesty's military or naval forces, or re-enrolls himself in the Indian Air Force, shall be deemed to be guilty of fraudulent enlistment and shall be punishable with short imprisonment

Notes—Section 40 is an abridged version of section 13 (1) of the English Act where of the shortening is justified by the simpler structure of the Indian Air Force. As with clause 39 the elaborate provisions relating to repeated offences have been omitted as inapplicable.—*Notes on Clauses*

41 Any person subject to this Act who being cognizant of any desertion of a person subject to this Act, does not forthwith give notice to his commanding officer, or take any steps in his power to cause the deserter or intending deserter to be apprehended, shall be punishable with short imprisonment

Notes—This section reproduces section 14 of the English Act omitting clause (2) which is on abetment.—*Notes on Clauses*

42 Any person subject to this Act who—
Absence from duty without leave

(a) absents himself without leave, or
(b) fails to appear at the time fixed at a parade or place appointed for exercise or duty, or goes from thence without leave before he is relieved, or without necessity quits his duty or duties or
(c) being an airman, when in camp, or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general local or other, order, without a pass or written leave from his superior officer, or

(d) being an airman without leave from his superior officer, or without due cause, absents himself from any school when duly ordered to attend there, shall be punishable with short imprisonment

Notes—Section 42 is section 15 of the English Act, with the following changes—

(a) In sub clause (b) an amendment has been made to cover the case of an airman who appears at the place of parade but appears so late that his appearance is virtually a non-appearance

(b) No differentiation is made between officer and airman.—*Notes on Clauses*

43 Any officer or warrant officer subject to this Act who behaves in a manner unbecoming his position and character shall notwithstanding anything contained in section 20 be dismissed from the service
Scandalous conduct of officer

Notes—The reference to clause 20 will prevent the imposition of imprisonment or any other penalty other than dismissal.—*Notes on Clauses*

44 Any person subject to this Act who—
Scandalous conduct punishable with long imprisonment

(a) steals any property of 'the Crown'* or dishonestly misappropriates or converts to his own use any property of the 'Crown'* entrusted to him or

(b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, or

(c) wilfully destroys or damages any property of "the Crown"* entrusted to him or

(d) steals any property of any air force mess, band or institu-

* The words 'the Crown' have been substituted for the word 'Crown'—*G I Order of 1937*

tion, or of any person subject to this Act or serving with or attached to the Indian Air Force, or dishonestly misappropriates or converts to his own use any such property entrusted to him, or

(e) dishonestly receives or retains any property in respect of which an offence under clause (d) has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, shall be punishable with long imprisonment

Notes—Sections 44 and 45 include several offences which are also civil offences and

of two years the others range from three years to seven years. As these punishments could be awarded by courts martial to a person subject to the Act by virtue of section 58 unless courts martial are given punishment is justified by the very serious from the service point

Scandalous conduct punishable with short imprisonment

45 Any person subject to this Act, who—

(a) does any act, not otherwise specified in this Act, with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, or

(b) malingers or feigns or produces disease or infirmity himself, or intentionally delays his cure or aggravates his disease or infirmity, or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person, or

(d) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission, shall be punishable with short imprisonment

46 Any person subject to this Act who is found in a state of

Intoxication intoxication whether on duty or not on duty, shall be punishable, if an officer, with dismissal from the service and if an airman with short imprisonment

Provided that where the offence of being intoxicated is committed by an airman not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months

Notes—In contrast with clause 43, this allows a less punishment than dismissal to be imposed on an officer—*Notes on Clauses*

Permitting escape of prisoner

47 Any person subject to this Act, who—

(a) when in command of a guard, picket, patrol or post, releases without proper authority, whether voluntarily or otherwise, any person committed to his charge, or

(b) voluntarily or negligently allows to escape any person who

is committed to his charge, or whom it is his duty to keep or guard, shall be punishable if he has acted voluntarily, with long imprisonment, and if he has not acted voluntarily, with short imprisonment.

Irregular keeping in custody. **48.** Any person subject to this Act who—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial or fails to bring his case before the proper authority for investigation, or

(b) having committed a person to the custody of any officer, *non-commissioned officer, provost-marshal or assistant provost-marshal* fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, *non-commissioned officer, provost-marshal or assistant provost-marshal*, into whose custody the person is committed, an account in writing signed by himself of the offences with which the person so committed is charged, or

(c) being in command of the guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account as above in this section mentioned, by that account, shall be punishable with short imprisonment

Notes—The Indian Army Act, 1911, in the matter of the protection of persons in custody against improper detention gives only a broad injunction in section 124 (3). It is deemed desirable to supplement this by adopting the penalties of the English Act for irregular keeping in custody—*Notes on Clauses*

49 Any person subject to this Act, who, being in lawful custody escapes or attempts to escape, shall be punishable with short imprisonment.

Escape from custody

Offences relating to property **50** Any person subject to this Act who—

(a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions, or

(b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property, or

(c) voluntarily or negligently kills, injures, makes away with, ill-treats or loses any animal used in the public service, or

(d) makes away with, or is concerned in making away with, any arms, ammunition, equipments, instruments, tools, clothing or service necessities issued to him or required to be maintained by him, or

(e) loses by neglect anything mentioned in clause (d), or

(f) wilfully damages anything mentioned in clause (d) or any property belonging to "the Crown," * or to any air force mess, band or

* The words 'the Crown' have been substituted for the word 'Government' by G. I. Order of 1937

institution, or to any person subject to air force law, or serving with, or attached to the Indian Air Force, or

(g) sells pawns, destroys or defaces any medal or decoration granted to him

shall be punishable with short imprisonment

Notes—This section reproduces section 35 of the Indian Act and corresponds to sections 23 and 24 of the English Act—*Notes on Clauses*

False accusations and offences
relating to documents

51 Any person subject to this Act—

(a) makes a false accusation against any person subject to this Act, knowing such accusation to be false, or

(b) any false this Act, 120, knowingly makes of any person subject to material fact, or

(c) obtains or attempts to obtain for himself or for any other person any pension allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any document or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement, or

(d) knowingly furnishes a false return or report of the number of state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Crown * or to any person in or attached to the Indian Air Force, or who, wilfully or negligently, omits or refuses to make or send any return or report of the matters aforesaid

shall be punishable with short imprisonment

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52 Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer shall be punishable with short imprisonment

Offences relating to courts
martial

53 Any person subject to this Act who—

(a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend or refuses to be sworn or affirmed or to answer any question or to produce or deliver up any document or other thing which he may have been duly warned and called upon to produce or deliver up, or

(b) intentionally offers any insult or causes any interruption or disturbance to or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a court-martial while sitting, or

* The words the Crown have been substituted for the word Government by G I Order of 1937

(c) having duly sworn or affirmed before any court-martial or other Court or officer authorised by this Act to administer an oath or affirmation, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, shall be punishable with short imprisonment

Offences relating to aircraft

54 Any person subject to this Act who—

(a) voluntarily or negligently damages destroys or loses any of His Majesty's aircraft or aircraft material, or

(b) is guilty of any act or omission likely to cause such damage destruction or loss, or

(c) is guilty of any act or omission (whether voluntary or otherwise) which causes damage to or destruction of any public property by fire, or

(d) without lawful authority disposes of any of His Majesty's aircraft or aircraft material or

(e) is guilty of any act or omission in flying or in the use of any aircraft, or in relation to any aircraft or aircraft material which causes or is likely to cause loss of life or bodily injury to any person or

(f) during a state of war voluntarily and without proper occasion or negligently causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any of His Majesty's aircraft,

shall be punishable, if he has acted voluntarily, with long imprisonment, and, if he has not acted voluntarily with short imprisonment

Notes—Section 54 introduces the special air force offences contained in section 39 of the Air Force Act with drafting amendments to suit Indian terminology—*Notes of Clauses*

Miscellaneous air force offences

55 Any person subject to this Act who—

(a) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position, or

(b) being in command at any post or on the march and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market or committed any riot or trespass fails to have due reparation made to the injured person or to report the case to the proper authority or

(c) by defiling any place of worship, or otherwise, intentionally insults the religion or wound the religious feelings of any person, or

(d) attempt to commit suicide and does any act towards the commission of such offence, or

(e) being below the rank of warrant officer, when off duty, appears without proper authority, in or about camp or cantonments, or in or about or when going to or returning from any town or bazar, carrying

(f) or obtains, or agrees to accept or attempt to obtain, or procures or attempts to procure for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence promotion or any other advantage or indulgence for any person in the service or

(g) is guilty of any act or omission which though not specified

in this Act is prejudicial to good order and air force discipline, shall be punishable with short imprisonment.

Notes—This section is added to the Indian Air Force Act which has been found to be in the Indian Army Act, 1911, and in the Indian Air Force Act, 1911.

56 Any person subject to this Act who attempts to commit an air force offence or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.

Notes—This section is added to section 23 A of the Indian Air Force Act which was introduced into the Act in 1918.

57 Any person subject to this Act who abets the commission of any air force offence punishable under the Army Act, the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Indian Army Act, 1911, such offence being of the same nature as any air force offence, shall be punishable with the punishment provided in this Act for such air force offence.

Notes—Section 57 is important. It is based on section 40 of the Indian Air Force Act but amplifies it so that it will cover a soldier who would have been punished by the Indian Acts and is liable to the punishment he deserves committed by himself.

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58 (1) Any person subject to this Act who at any place in or beyond British India commits any civil offence, and if charged therewith under this section, shall be liable to be tried by court-martial and to be punished as follows, that is to say:—

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment other than whipping, assigned for the offence by the law of British India; and

(b) in other cases, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law of British India, to him in pursuance of this Act, in good order and air force discipline.

Provided that a person subject to this Act who at any place in British India or at any place in which "the Central Government or

* The words and figure, quoted above have been inserted by Act XXXV of 1934

the Crown Representative" * exercises powers and jurisdiction by virtue of 'the Government of India Act, 1935, or of any order in Council made under the Foreign Jurisdiction Act, 1890' † and while not on active service, commits an offence of murder or culpable homicide against a person not subject to this Act or an offence of rape, shall not be deemed to be guilty of an air force offence and shall not be tried by court-martial

(2) The power of a court martial to charge and to punish any person under this section shall not be affected by reason of the civil offence with which such person is charged being also an air force offence

Notes—Section 58 is a compromise between section 41 of the English Act and sections 41 and 42 of the Indian Act. The English Act begins by a general statement that all civil offences committed by persons subject to this Act shall be triable by court martial

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many places where a
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is triable by court

India Section 42
Chapter VI of the Indian Penal
Code and treason felony and also
murder culpable homicide and
person subject to this Act triable

In their treatment of this subject the two Acts are not reconcilable and the Bill proposes to confer a jurisdiction which will cover the jurisdiction conferred by both Acts. In particular it follows the Indian Act in making offences punishable under Chapter VI of the Penal Code triable by court martial. It therefore exempts from the jurisdiction of courts martial only offences of murder or culpable homicide against a person not subject to this Act and offences of rape when these offences are committed in British India (and certain other places) and while the offender is not on active service.

The certain other places above referred to are described in the clause as places in which the Governor General in Council exercises powers and jurisdiction by virtue of the 'Indian (Foreign Jurisdiction) Order in Council 1902' and these places have been introduced by the clause as follows:—

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places among places beyond British India with the peculiar result that troops in Mhow for instance are subject to military law for all civil offences while troops in Jubbulpore are subject to military law only in respect of the few offences specified in section 42 though Mhow is the headquarters of the military district which includes Jubbulpore. Clause 58 avoids the anomaly and will make all airmen in all cantonments in India subject to the same jurisdiction.—Notes on Clauses

CHAPTER V

ARREST AND PROCEEDINGS BEFORE TRIAL

Custody of offenders

59 (1) Any person subject to this Act who is charged with an offence may be taken into air force custody

(2) Any such person may be ordered into air force custody by any superior officer.

(3) The charge against every person taken into air force custody shall, without unnecessary delay, be investigated by the proper authority, and as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody

Notes—¹ This Chapter collects into one place all provisions of the Indian Act relating to arrest inquiries concerning absconders and provost marshals—all matters preceding trial. The clauses follow the Indian Act and require no special comment.—*Notes on Clauses*

60 Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any Magistrate or police-officer, such Magistrate or officer shall aid in the apprehension and delivery to air force custody of such person upon receipt of a written application to that effect signed by his commanding officer

61 (1) Whenever any person subject to this Act deserts, his commanding officer shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter, and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended, to air force custody

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest Magistrate, to be dealt with according to law.

62 (1) When any person subject to this Act has been absent without due authority from his duty for a period of twenty one days, a Court of inquiry shall as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of 'the Crown' * entrusted to his care or of his arms, ammunition, equipments, instruments clothing or necessities, and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the unit to which the person belongs shall enter in the court-martial book of the unit a record of the declaration

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter

63 For the prompt and instant repression of irregularities and offences committed in field or on the march, provost-marshals may be appointed by the Air Officer Commanding His Majesty's Air Forces in India,

* The words 'the Crown' have been substituted for the words 'the Government' by order of 1937.

and the powers and duties of such provost marshals shall be regulated according to the established custom of war and the rules of the service.

64. The duties of a provost-marshal so appointed are to take charge of persons in air force custody, to preserve good order and discipline and to prevent breaches thereof by persons subject to this Act.

He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.

CHAPTER VI

CONSTITUTION, JURISDICTION AND POWERS OF COURTS-MARTIAL

65 For the purposes of this Act there shall be three kinds of courts-martial, that is to say—

- (1) general courts-martial
- (2) district courts-martial and
- (3) field general courts-martial

ifications, this Chapter follows sections 53 64 74 75 and 76 relating to summary provision for summary courts martial in

66 A general court-martial may be convened by the "Central Government" or by any officer empowered in this behalf by warrant of the "Central Government."

67. A district court-martial may be convened by any authority having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such authority.

68 A warrant issued under section 66 or section 67 may contain such restrictions, reservations or conditions as the authority issuing it may think fit

69 The following authorities shall have power to convene a field general court martial that is to say,—

(a) an authority empowered in this behalf by an order of the "Central Government,"

(b) on active service, the commanding officer of the forces in the field, or any officer empowered by him in this behalf,

(c) the commanding officer of any detached portion of the Indian Air Force on active service, when, in his opinion, it is not practicable, with due regard to discipline or the exigencies of the

* The words "Central Government" have been substituted for the words "Governor General in Council" by G. I. Order of 1937.

service, that an offence should be tried by a general court-martial, and circumstances prevent a reference to higher authority

70 A general court-martial shall consist of not less than five officers each of whom must have held a commission during not less than three whole years and of whom not less than four must be of a rank not below that of a flight lieutenant

Composition of general courts martial **Notes**—This section adopts the English section 48 (3) in preference to the Indian section 57. Though the word officers will include commissioned officers of the British Army and Indian Army it will be desirable to constitute courts martial under the Act as far as possible from officers of the Indian Air Force and of the Royal Air Force and the normal requirement of some officers provided in the Indian Act will be troublesome. The omission of section 59 of the Indian Act is consequential.—*Notes on Clauses*

Composition of district courts martial **71** A district court-martial shall consist of not less than three officers

Composition of field general courts martial **72** A field general court martial shall consist of not less than three officers

73 (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved

(3) Where a court-martial is dissolved under this section the accused may be tried again

Jurisdiction and powers of courts martial generally **74** Save as otherwise provided by or under this Act, courts martial shall have—

(a) jurisdiction to try and to punish all air force offences, and all civil offences committed by persons subject to this Act,

(b) exclusive jurisdiction to try all air force offences which are not also civil offences, and

(c) exclusive power to award the punishments specified in this Act

Notes—Section 74 has been introduced for a shortening of the drafting of Chapter IV conviction by court martial (b) clauses to general principles of jurisdiction which Clauses

Jurisdiction and powers of general and field general courts martial **75** A general or field general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorized by this Act

Jurisdiction and powers of district courts martial **76** A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein and to pass any sentence authorized by this Act other than a sentence of death or imprisonment for a term exceeding two years

77 When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a Criminal Court, or has been summarily dealt with for an offence under section 25, he shall not be liable to be tried again for the same offence by a court martial

78 No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enlistment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enlistment shall be commenced if the person in question has, subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces

Explanation—For the purposes of this section "mutiny" means any of the offences specified in section 35

79 Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever

80 When a Criminal Court and a court-martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed air force authority to decide before which Court the proceedings shall be instituted and if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in air force custody

81 (1) When a Criminal Court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any civil offence it may, by written notice, require the prescribed air force authority at the option of such authority either to deliver over the offender to the nearest Magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the 'Central Government' *

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the 'Central Government' * whose order upon such reference shall be final

Notes—We have made a small drafting amendment in sub clause (2) in order to place it beyond dispute that the option given in the clause lies with the prescribed air force authority —*Report of the Select Committee*

82 (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897,† or in section 403 of the Code of Criminal Procedure, 1898‡ a person convicted or acquitted by a court-martial may be afterwards tried by a Criminal Court for the same offence or on the same facts

* The words 'Central Government' have been substituted for the words 'Governor General in Council' by G. I. Order of 1937

† I of 1897

‡ V of 1893

(2) If a person sentenced by a court martial in pursuance of this Act to punishment for an offence is afterwards tried by a Criminal Court for the same offence or on the same facts that Court shall in awarding punishment have regard to the air force punishment he may already have undergone

CHAPTER VII

PROCEDURE OF COURTS MARTIAL

President

83 At every court martial the senior member shall sit as president

Notes—This Chapter is derived from the provisions of sections 7 to 93 of the Indian Act. Sections 9 and 93 (3) relating to summary courts martial have been omitted. Section 87 of the Indian Act instead of being given a place of its own is included as a proviso in clause 86 of the Bill. Also section 176A of the Indian Act has been included here as being part of the procedure of court martial while sitting—*Notes on Clauses*

84 Every general court martial shall and every district court-martial may be attended by a Judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in India or if no such officer is available a fit person appointed by the convening officer

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85 (1) At all trials by courts martial as soon as the Court is assembled the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the Court

(2) If the accused objects to any such officer his objection and also the reply thereto of the officer objected to shall be heard and recorded and the remaining officers of the Court shall, in the absence of the challenged officer decide on the objection

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire and his vacancy may be filled in the prescribed manner by another officer subject to the same right of the accused to object

(4) When no challenge is made or when challenge has been made and disallowed or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed the Court shall proceed with the trial.

86 (1) Every decision of a court martial shall be passed by an absolute majority of votes and where there is an equality of votes as to either finding or sentence the decision shall be in favour of the accused

Provided that no sentence of death shall be passed without the concurrence of two thirds at the least of the members of the Court

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote

87 An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the Judge advocate at the beginning of the trial.

88 Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form

89 (1) The convening officer, the president of the Court, the Judge advocate or the commanding officer of the accused person may by summons under his hand, require the attendance before the Court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing

(2) In the case of a witness amenable to air force, "naval" * or military authority, the summons shall be sent to the officer commanding the corps, "ship," * unit, department or detachment to which he belongs, and such officer shall serve it upon him accordingly

(3) In the case of any other witness the summons shall be sent to the Magistrate within whose jurisdiction he may be or reside, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any document in the custody of the postal or telegraph authorities

(6) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session wanted for the purpose of any court-martial, such Magistrate or Court may require the postal or telegraph authorities, as the case may be to deliver such document to such person as such Magistrate or Court may direct

(7) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court

90 (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case, would be unreasonable, such Court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued

* The word quoted has been inserted by Act XXV of 1934

(2) The Judge Advocate General may then if he thinks necessary, issue a commission to any Presidency Magistrate, District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in "any Indian State or tribal area" in which there is an official representing "the Central Government or the Crown Representative"† the commission may be issued to such official.

(4) The Magistrate or official to whom the commission is issued, or, if he is the District Magistrate he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials or warrant cases under the Code of Criminal Procedure 1898†

(5) Where the commission is issued to such official as is mentioned in sub-section (3) he may delegate his powers and duties under the commission to any official subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British Magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the Court may think relevant to the issue and the Magistrate or official to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such Magistrate or official by pleader or, except in the case of an accused person in custody in person, and may examine cross examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the Court at whose instance the commission was issued or, if such Court has been dissolved to any other Court convened for the trial of the accused person, and the commission, the return thereto and the deposition, shall be open to the inspection of the prosecutor and the accused person and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation—In this section, the expression 'Judge Advocate

* The words "any Indian State or tribal area" have been substituted for the words "of 1937" of 1937.
Representative have been G. I. Order of 1937.

General means the Judge Advocate General in India and includes a Deputy Judge Advocate General

Conviction of one offence permissible on charge of an other

91 (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave

(3) A person charged before a court-martial with using criminal force may be found guilty of a assault

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language

(5) A person charged before a court-martial with any of the offences specified in clause (a) clause (b), clause (d) or clause (e) of section 44 may be found guilty of any other of these offences with which he might have been charged

(6) A person charged before a court-martial with an offence punishable under section 58 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable

(7) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged

General rule as to evidence

92 The Indian Evidence Act, 1872 * shall, subject to the provisions of this Act,

apply to all proceedings before a court-martial

93 A court-martial may take judicial notice of any matter within the general, naval, military or air force knowledge of the members

Judicial notice

94 In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service Crown † shall on production be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed until the contrary is shown

Presumption as to signatures

95 Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be

Enrolment paper as evidence

* I of 1872

† The words the service of the Crown have been substituted for the word the civil military or air force service of the Government by G. I. Order of 1937

certified to be a true copy by the officer having the custody of the enrolment paper

96 (1) A letter, return or other document respecting the service of any person in or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the Governor General in Council or the Commander-in-Chief in India or by any prescribed officer shall be evidence of the facts stated in such letter return or other document

Presumption as to certain documents

(2) An Army List 'Navy list,'* Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, Ships'* unit battalion arm, branch or department of the service to which such officers or warrant officers belong

(3) Where a record is made in any service book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of air force duty and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated

(4) A copy of any record in any service book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by a provost-marshal assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact date and place of such surrender or apprehension, shall be evidence of the matters so stated

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters stated

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act

97 (1) If at any trial for desertion absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any

Reference by accused to Government officer

* The word quoted has been inserted by Act XXX of 1934

officer in the civil, military or air force service of Government or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer and adjourn until his reply is received

(2) The written reply of any officer so referred to shall if signed by him, be received in evidence and have the same effect as if made on oath before the Court

(3) If the Court is dissolved before the receipt of such reply or if the Court omits to comply with the provisions of this section the convening officer may at his discretion annul the proceedings and order a fresh trial by the same or another court-martial

98 (1) When any person subject to this Act has been convicted by a court-martial of any offence such court martial may inquire into and receive and record evidence of any previous convictions of such person either by a court martial established under this Act or any other enactment or by a Criminal Court, and may further inquire into and record the service character of such person

(2) Evidence received under this section may be either oral or in the shape of entries in or certified extracts from court martial books or other official records, and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or service character will be received

Notes — This clause relates to evidence which may be adduced in a court martial after the accused is convicted relating to his previous convictions and general character. The clause as originally drafted would appear to admit evidence relating to a man's private life and to that extent we think it is too wide. We have amended the clause therefore in order to admit only evidence relating to previous convictions and to a man's character as an officer or airman. — *Report of the Select Committee*

99 When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence is produced before a court martial during a trial the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial and if the property is subject to speedy or natural decay may after recording such evidence as it thinks necessary order it to be sold or otherwise disposed of

CHAPTER VIII

CONFIRMATION REVISION PARDON AND REMISSION OF SENTENCES

Finding and sentence invalid without confirmation

100 No finding or sentence of a general or district court martial shall be valid except so far as it may be confirmed

as provided by this Act

Notes — The provisions of this section are given in the court martial rules.

The English law requires that a finding of acquittal by a court martial shall be given effect to forthwith [see section 54 (3) of the English Act]

(b) When a case is sent back to a court martial on revision the Indian law empowers the Court to take additional evidence, if so required by the confirming authority (see

Power to confirm finding and sentence of general court martial

101. The findings and sentences of general courts-martial may be confirmed by the "Central Government"* or by any officer empowered in this behalf by warrant

of the "Central Government."*

102. The findings and sentences of district courts-martial may be confirmed by any authority having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such authority

Power to confirm finding and sentence of district court martial

Limitation of powers of confirming authorities

103. A warrant issued under sections 101 or section 102 may contain such restrictions, reservations or conditions as the authority issuing it may think fit

104. (1) Save as provided in sub-sections (2) and (3), a finding and sentence of a field general court-martial shall not require to be confirmed, and may be carried out forthwith

Confirmation of finding and sentence of field general court martial

(2) The finding and sentence of a field general court-martial shall require to be confirmed —

(a) in the case of the trial of an officer ;

(b) in the case of a sentence of death or of imprisonment for a term exceeding two years, and

(c) in any other case if so ordered.

(3) Such finding and sentence may be confirmed by any authority superior or, if the convening authority is not empowered to confirm, by the convening authority

Notes —Section 101 recasts section 98 of the Indian Act which is not clear —Notes on Clauses

105. Subject to such restrictions as may be contained in any warrant issued under section 101 or section 102, a confirming authority may, if it confirms the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment or any punishment or punishments lower in the scale laid down in section 19

Power of confirming authority to mitigate, remit or commute sentences

106. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed by the commanding officer of the ship

Confirmation of finding and sentence on board ship

* The words "Central Government" have been substituted for the words "Governor General in Council" by G. I. Order of 1937.

confirmed and executed in like manner as if such person had been tried at the port of disembarkation

107. (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority, and on such revision, the Court, if so directed by the confirming authority, may take additional evidence

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided that, if a general court-martial it still consists of five officers, or if a district court-martial, of three officers

108. Where a sentence passed by court-martial which has been confirmed, or which does not require confirmation is found for any reason to be invalid, the authority which would have had power under section 110 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence :

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of the punishments than, or in excess of, the punishment awarded by the invalid sentence

109 (1) Whenever in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged, but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the president of the Court shall forthwith report the case to the confirming authority, or, in the case of a field general court-martial, to the prescribed officer.

(2) A confirming authority to whom a case is reported under sub-section (1), may, if it does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming authority confirming a finding in any case so reported to it shall order the accused person to be kept in custody in the prescribed manner, and, where the confirming authority is not itself the "Central Government"* shall report the case for the orders of the "Central Government"*

(4) On receipt of a report under sub-section (1) or sub-section (3), the "Central Government"* may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention the prescribed officer may—

* The words "Central Government" have been substituted for the words "Governor-General in Council" by G. I. Order of 1937.

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898 *

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the "Central Government."†

110 (1) When any person subject to this Act has been convicted by a court-martial of any offence, the
 Pardons and remissions "Central Government"† or the prescribed officer may—

(a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded, or

(b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted

Provided that in the case of a person sentenced to imprisonment, such person shall undergo only the unexpired portion of his sentence

(3) When under the provisions of section 23 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial

CHAPTER IX

EXECUTION OF SENTENCES AND DISPOSAL OF PROPERTY.

111. In awarding a sentence of death a court-martial shall, in its discretion direct that the offender shall, suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death

Notes—This Chapter covers Chapter IX of the Indian Act and adds to it section 120B which also relates to matters subsequent to the trial. It omits section 110 which relates to solitary confinement.—*Notes on Clauses*

112 Whenever any person is sentenced under this Act to imprisonment the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president

113 Whenever any sentence of imprisonment is passed under this Act, or whenever any sentence so passed is commuted to imprisonment, the commanding officer of the person under

* V of 1893

† The words "Central Government" have been substituted for the words "Governor General in Council" by G. I. Order of 1937.

sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined, and shall forward him to such prison with the warrant

Provided that, in the case of a sentence of imprisonment for a period not exceeding three months, the confirming authority, or, in the case of a sentence which does not require confirmation, the Court may direct that the sentence shall be carried out by confinement in air force custody

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint

Notes—This section corresponds to section 107 of the Indian Act but has been widened in its scope to cover imprisonment either rigorous or simple and section 105 of the Indian Act has accordingly not been reproduced. This has been done in order to avoid the practical difficulties which will attend the serving of a long term of simple imprisonment in air force custody. Proper accommodation will be lacking and the presence in barracks of a prisoner to whom duties cannot be given is not in the interest of discipline.—*Notes on Clauses*

114 Whenever, in the opinion of the Air Officer commanding His Majesty's Air Forces in India, any sentence or portion of a sentence of imprisonment cannot, for special reasons conveniently be carried out in accordance with the provisions of section 113, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place

115. When any sentence of detention is passed under this Act, or when any sentence so passed is commuted to detention, the punishment shall be carried out by detaining the offender in any military or air force detention barracks, detention cells or other military or air force custody

116 Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer-in-charge of the prison in which such person is confined

117 Where a sentence of transportation is imposed by court-martial under section 58, the offender, until he is transported, shall be dealt with in the same manner as if he had been sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment

and the provision made is in accordance with the ordinary law.—*Notes on Clauses*

118 When a sentence of a fine is imposed by a court-martial under section 58 whether the trial was held within British India or not a copy of such

sentence, signed and certified by the president of the Court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 * for the levy of fines as if it was a sentence of fine imposed by such Magistrate

119 (1) After the conclusion of a trial before any court martial, the Court or the authority confirming its finding or sentence or any authority superior to such authority, or, in the case of a finding or sentence which does not

Order for disposal of property regarding which offence committed

require confirmation, the officer commanding the unit within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the Court or in its custody, or regarding which any offence appears to have been committed or which has been used, for the commission of any offence

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within British India or not be sent to a Magistrate in any presidency town or district in which such property for the time being is and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure 1898 *

Explanation—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise

CHAPTER X

SPECIAL RULES RELATING TO PERSONS AND PROPERTY

120 (1) If an officer of the Indian Air Force thinks himself wronged by his commanding officer, or other superior officer, and on due application made to his commanding officer does not receive the redress to which he may consider himself entitled, he may complain to the Governor General in Council in order to obtain justice

(2) If any airman thinks himself wronged in any matter by any officer other than the officer under whose command or orders he is serving, or by any airman, he may complain thereof to the officer under whose command or orders he is serving and if he thinks himself wronged by the officer under

whose command or orders he is serving, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the prescribed officer, and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into and shall if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complaint in respect of the matter complained of

Notes—This Chapter includes all provisions of the nature of special privileges relating to both persons and property. It covers the ground in sections 117 to 122 and sections 114 to 118 of the Indian Act.—*Notes on Clauses*

121 (1) No president or member of a court-martial, no Judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to, attend a court-martial, shall while proceeding to attending on or returning from a court-martial, be liable to arrest under civil or revenue process

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial

122 (1) No officer or person enrolled in the Indian Air Force shall be liable to be arrested for debt under, any process issued by, or by the authority of any civil or revenue Court or revenue-officer

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process

(3) For the recovery of such costs no fee shall be payable to the Court by the complainant

Notes—Section 122 departs slightly from section 119 of the Indian Act which is not clear in its opening words.—*Notes on Clauses*

123 Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to the Act nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowance of any such person or any part thereof be attached by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him

124 Every person belonging to the Indian Air Force Reserve shall when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 122 and 123 to a person subject to this Act,

125 (1) On the presentation to any Court by or on behalf of any person subject to this Act of a certificate, from the proper air force authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall on the application of such person, arrange so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave granted or applied for

Priority of hearing by Courts of cases in which persons subject to this Act are concerned

(2) The certificate from the proper air force authority shall state the first and last day of the leave or intended leave and set forth a description of the case with respect to which the leave was granted or applied for

(3) No fee shall be payable to the Court in respect of the presentation of any such certificate or in respect of any application by or on behalf of any such person for priority for the hearing of his case

(4) When the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself

(5) If in any case a question arises as to the proper air force authority qualified to grant such certificate as aforesaid such question shall be at once referred by the Court to an officer commanding a unit whose decision shall be final

Property of deceased person and deserters

126 The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts —

(1) The commanding officer of the unit to which the deceased person or deserter belonged shall secure all the movable property belonging to the deceased or deserter that is in camp or quarters and cause an inventory thereof to be made and draw any pay and allowances due to such person

(2) In the case of a deceased person who is left in a Government Bank (however named) the commanding officer

may if he thinks fit require the secretary or other proper official of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules, and after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the service or other debts in camp or quarters (if any) of the deceased the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative

(4) In the case of a deceased person whose estate is not dealt with under clause (3) and in the case of any deserter the commanding officer shall cause the movable property to be sold by public auction,

and shall pay the service and other debts in camp or quarters (if any) and in the case of a deceased person, the expenses of his funeral ceremonies, from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2)

(5) The surplus if any, shall in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, be remitted to the prescribed person

(6) In the case of a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended

Explanation—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of twenty-one days and has not subsequently surrendered or been apprehended

127 Property deliverable and money payable to the representative of a deceased person under section 126 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title and such delivery or payment shall be a full discharge to those ordering or making the same and to the 'Crown'* from all further liability in respect of the property or money but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor of a deceased person against any person to whom such delivery or payment has been made

128 The provisions of section 126 shall so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane or who, being on active service, is officially reported missing

Provided that, in the case of a person so reported missing no action shall be taken under sub section (2) to (5), inclusive of the said section, until one year has elapsed from the date of such report

CHAPTER XI

SUPPLEMENTAL

129 (1) The 'Central Government'† may make rules for the purpose of carrying into effect the provisions of this Act

Power to make rules

* The word Crown has been substituted for the words Secretary of State for India in Council by G. I. Order of 1937

† Substituted by G. I. Order of 1937

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the discharge from the service of persons subject to this Act,
- (b) the specification of the punishments which may be awarded as field punishments under sections 21 and 25,
- (c) the assembly and procedure of Courts of inquiry, and the administration of oaths or affirmations by such Courts,
- (d) the convening and constituting of courts-martial,
- (e) the adjournment, dissolution and sittings of courts-martial,
- (f) the procedure to be observed in trials by courts-martial,
- (g) the confirmation and revision of the findings and sentences of courts-martial
- (h) the carrying into effect sentences of courts-martial,
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial and imprisonment,
- (j) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependents under section 29, and the due carrying out of such decisions, and
- (k) any matter in this Act directed to be prescribed

(3) All rules made under this Act shall be published in the "official Gazette" * and, on such publication, shall have effect as if enacted in this Act.

Notes—Section 129 copies section 113 of the Indian Act. It has been found to be sufficient for the Indian Army and this Bill does not depart from the Act in any particular manner which requires an additional rule making power.—*Notes on Clauses*

Amendment of certain enactments

130 [Repealed by Act I of 1938]

THE SCHEDULE [Omitted by Act I of 1938]

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THE ANCIENT MONUMENTS PRESERVATION ACT, 1904

ACT NO VII OF 1904

An act to provide for the preservation of Ancient Monuments and of objects archaeological historical or artistic interest

Received the assent of the Governor General on the 18th March, 1904

WHEREAS it is expedient to provide for the preservation of ancient monuments for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archaeological, historical or artistic interest, it is hereby enacted as follows—

Short title and extent

1 (1) This Act may be called the Ancient Monuments Preservation Act, 1904

*(2) It extends to the whole of British India, inclusive of British Baluchistan the Sonthal Parganas and the Pargana of Spiti

Definition

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) 'ancient monument,' means any structure, erection or monument, or any tumulus or place of interment or any cave, rock-sculpture, inscription or monolith which is of historical archaeological or artistic interest or any remains thereof, and includes—

(a) the site of an ancient monument,

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(c) the means of access to and convenient inspection of an ancient monument

(2) 'antiquities' include any movable objects which the Government, by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion

(3) 'Commissioner' includes any officer authorized by

* This sub section (2) is not in force in British Burma (vide G. B. Order of 1937)

"Central Government"* to perform the duties of a Commissioner under this Act:

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto:

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject to incumbrances or not and

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee.

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

3 (1) The "Central Government"* may, by notification in the "official Gazette",† declare an ancient monument to be protected monument within the meaning of this Act

Protected monuments

Gazette",† declare an ancient monument to be protected monument within the meaning of this Act

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the "Central Government"* within one month from the date when it is so fixed up will be taken into consideration

(3) On the expiry of the said period of one month, the "Central Government"* after considering the objections, if any, shall confirm or withdraw the notification

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act

Ancient monuments

Acquisitions of rights in or guardianship of an ancient monument

4 (1) The Collector, with the sanction of the "Central Government"* may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument

(3) The owner of any protected monument may, by written instrument constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the "Central Government"*, accept such guardianship.

(4) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly

* For the words "Local Government" the words "Central Government" have been substituted in Burma read "Governor"

provided in this Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof

(5) When the Commissioner has accepted the guardianship of a monument under sub-section (3) the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument

5 (1) The Collector may, with the previous sanction of the
 Preservation of ancient monu- "Central Government" * propose to the
 ment by agreement owner to enter into an agreement with
 "the Central Government"† for the pre-
 servation of any protected monument in his district

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement —

(a) the maintenance of the monument

(b) the custody of the monument and the duties of any person who may be employed to watch it

(c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument

(e) the notice to be given to 'the Central Government' ‡ in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to 'the Central Government' ‡ to purchase such land, or any specified portion of such land at its market-value

(f) the payment of any expenses incurred by the owner or by the 'Central Government' ‡ in connection with the preservation of the monument

(g) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by 'the Central Government' ‡ in connection with the preservation of the monument

(h) the appointment of an authority to decide any dispute arising out of the agreement, and

(i) any matter connected with the preservation of the monument

* For the words Local Government, the words Central Government have been substituted in British India by G. I. Order of 1937. But in British Burma the words Governor have been retained (vide G. I. O. of 1937)

the Central
 In British
 (vide G

‡ For the words the Government the words the Central Government have been substituted in British India by G. I. Order of 1937. But in British Burma the words Government have been retained (vide G. I. O. of 1937)

any such act within such reasonable time as may be fixed by the Collector the Collector may authorize any person to do any such act and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue

(3) A person aggrieved by an order made under this section may appeal to the Commissioner who may cancel or modify it and whose decision shall be final

8 Every person who purchases, at a sale for arrears of land revenue or any other public demand [or at a sale made under the Bengal Putni Taluks Regulation 1819*]† an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being under section 4 or section 5 and every person claiming any title to a monument from through or under an owner who executed any such instrument, shall be bound by such instrument

9 (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof

(2) On the hearing of an application under sub section (1), the District Judge may summon and examine the owner and any person whose evidence, appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof and any such order may be executed as if it were the decree of a Civil Court

10 (1) If the Central Government‡ apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay the Central Government may direct the Provincial Government to acquire it § under the provisions of the Land Acquisition Act, 1894 || as if the preservation of a protected monument were a public purpose within the meaning of that Act

* Act VIII of 1819

† In British Burma the words within brackets have been omitted by C B Order of 1937

‡ The words Central Government have been substituted for the words Local Government in British India by G I Order of 1937 In British Burma for these words read Governor (vide G B Order of 1937)

§ The words the Central Government may direct the Provincial Government to acquire it have been substituted for the words the Local Gov may proceed to acquire it by G I Order of 1937 But in British Burma for the Governor may proceed to acquire it (vide G B Order of 1937)

|| Act I of 1894

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of--

(a) any monument which or any part of which is periodically used for religious observances, or

(b) any monument which is the subject of a subsisting agreement executed under section 5

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed within such reasonable period as the Collector may fix in this behalf to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement

* 10A (1) If the 'Central Government † is of opinion that mining quarrying excavating blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the 'Central Government † may by notification in the "official Gazette, ‡ make rules--

Power of Central Government † to control mining etc near ancient monument

(a) fixing the boundaries of the area to which the rules are to apply,

(b) forbidding the carrying on of mining, quarrying excavating blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and

(c) prescribing the authority by which, and the terms on which licences may be granted to carry on any of the said operations

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which, may extend to two hundred rupees

(4) If any owner or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the Central Government † that he has sustained loss by reason of such land being so included the "Central Government † shall pay compensation in respect of such loss †

Notes — This clause amounts to little more than a transfer of 10 Advantage has been taken that this section covers mining endangering an ancient monument in any area notified under the section purpose —Notes on Clauses

* Inserted by Act 18 of 1937
† The words 'Central Government' have been substituted for the words 'Local Government in British India by G. I. Order of 1937 In British Burma for these words read 'Governor (vide G. B. Order of 1937)
‡ The words 'official Gazette' have been substituted for the words 'local official Gazette' by G. I. Order of 1937 But in British Burma for these words read 'Gazette' (vide G. B. Order of 1937)

11 (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10

(2) When the Commissioner has accepted the guardianship of a monument under section 4 he shall for the purpose of maintaining such monument have access to the monument at all reasonable times by himself and by his agent subordinates and workmen for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof

12 The Commissioner may receive voluntary contribution towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed

13 (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character

(2) Where the Collector has under section 4 purchased or taken a lease of any protected monument or has accepted a gift or bequest, or the Commissioner has under the same section accepted the guardianship thereof and such monument or any part thereof is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument or such part thereof from pollution or desecration—

(a) by prohibiting the entry therein except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used or

(b) by taking such other action as he may think necessary in this behalf

14 With the sanction of the Central Government * the Commissioner may—

(a) where rights have been required by Central Government † in respect of any monument under this Act by virtue of any sale lease gift or will relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired or

(b) relinquish any guardianship of a monument which he has accepted under this Act

Local Government
for these orders

Government
words

15 (1) Subject to such rules as may after previous publication be made by the 'Central Government' * the public shall have a right of access to any monument maintained by the 'Central Government † under this Act

Right of access to certain protected monuments

(2) In making any rule under sub-section (1) the 'Central Government' * may provide that a breach of it shall be punishable with fine which may extend to twenty rupees

16 Any person other than the owner who destroys, removes, injures alters, defaces or imperils a protected monument, and any owner who destroys, removes injures alters defaces or imperils a monument maintained by 'Central Government † under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1) shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months or with both

Penalties

Traffic in Antiquities

17 (1) If the 'Central Government ‡ apprehends that antiquities are being sold or removed to the detriment of India § or of any neighbouring country, he may, by notification in the 'official Gazette || prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of 'British India' § or any specified part of 'British India' §

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of 'British India § or any part of 'British India § in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation

(4) An officer of Customs or an officer of Police of a grade not lower than Sub-Inspector duly empowered by the 'Central Government' * in this behalf, may search any vessel cart or any other means of conveyance and may open any baggage or package of goods if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein

* The words 'Central Government' have been substituted for the word 'Local Government' in 'British India' by G. I. Order of 1937. But in 'British Burma' for the words 'Central Government' read the word 'Governor' (1937 G. I. Order of 1937)

† The words 'Central Government' have been substituted for the words 'Government' in 'British India' by G. I. Order of 1937. But in 'British Burma' for the words 'Central Government' read the word 'Government'

‡ The words 'Central Government' have been substituted for the word 'Governor' in 'British Burma' for

and for 'British

§ The words 'British India' have been substituted by G. I. Order of 1937. In 'British Burma' read 'Gazette' for the words 'British India'.

§ The words 'British India' have been substituted by G. I. Order of 1937. In 'British Burma' read 'Gazette' for the words 'British India'.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the 'Central Government'* and the 'Central Government'* shall pass such order and may award such compensation if any as appears to it to be just

*Protection of Sculptures Carvings Images, Bas-reliefs,
Inscriptions or like objects*

18 (1) If the 'Central Government'* considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the "Central Government,"† the 'Central Government'* may, by notification in the official Gazette",‡ direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish in regard to such object or objects, any information which the Collector may require

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final

(4) Any person who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees

(5) If the owner of any property proves to the satisfaction of the Central Government* that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), the "Central Government"* shall either—

(a) exempt such property from the said notification,

(b) purchase such property, if it be movable, at its market-value ;

or

(c) pay compensation for any loss or damage sustained by the owner of such property, if it be immovable

19 (1) If the "Central Government"* apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, the "Central Government"* may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased

(2) The power of compulsory purchase given by this section shall not extend to—

* The words 'Central Government' have been substituted for the words, "Local Government"

(a) any image or symbol actually used for the purpose of any religious observance, or

(b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family

"Archæological Excavations"

* 20 (1) If the 'Central Government,' † † is of opinion that excavation for archæological purposes in any area should be restricted and regulated in the interests of archæological research, the 'Central Government,' † may, by notification in the "official Gazette" § specifying the boundaries of the area, declare it to be a protected area

Power of 'Central Government' † to notify areas as protected

(2) From the date of such notification all antiquities buried in the protected area shall be the property of 'the Crown' || and shall be deemed to be in the possession of 'the Crown,' || and shall remain the property and in the possession of 'the Crown' || until ownership thereof is transferred, but in all other respects the rights of any owner or occupier of land in such area shall not be affected

Power to enter upon and make excavations in a protected area

*20A (1) Any officer of the Archæological Department or any person holding a licence under section 20B may, with the written permission of the Collector, enter upon and make excavations in any protected area

(2) Where in the exercise of the power conferred by sub-section (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land "the Central Government" * shall pay to that person compensation for the infringement

Power of 'Central Government' † to make rules regulating archæological excavation in protected areas

20B (1) The 'Central Government', † may make rules—

(a) prescribing the authorities by whom licences to excavate for archæological purposes in a protected area may be granted,

(b) regulating the conditions on which such licences may be granted, the form of such licences and the taking of security from licensees,

(c) prescribing the manner in which antiquities found by a licensee shall be divided between "the Central Government" * and the licensee, and

* Substituted by Act 18 of 1932

† The words "Central Government" have been substituted in British India for the words "the Government of British Burma for the Order of 1937")
the word "the Government of British Burma" has been omitted by
G. I. O.
§ In
words "the Government of British Burma" read "the Government of British Burma"

|| The words "the Government of British India" by G.
words "Central Government" read the words "the Government"

(d) generally to carry out the purposes of section 20

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication

(3) Such rules may be general for all protected areas for the time being or may be special for any particular protected area or areas

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees and may further provide that where the breach has been done by the agent or servant of a licensee the licensee himself shall be punishable

***20C** If the 'Central Government'† is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, he may direct the "Provincial Government"‡ to acquire such area, or any part thereof, and the 'Provincial Government'§ may thereupon acquire such area or part under the Land Acquisition Act, 1894 § as for a public purpose |

Notes — The Ancient Monuments Preservation Act 1901 (VII of 1901) does not contain any provisions empowering the Government (i) to control excavations by or enlist the aid of archaeologists whether Indian or foreign outside the Department or universities and learned societies in excavation work or (ii) to regulate the disposal of antiquities found by such outside agencies. The only section of the Act which bears on the control of excavation is section 20 but the scope of this is limited to restricting or regulating operations such as mining quarrying or blasting which menace the safety of an ancient monument. Experience of countries such as Egypt and Mesopotamia shows that the help of expert outside agencies as well as of learned bodies in India would

by inserting three new sections relating for the purpose of disclosing an Proposed section 20 gives the Governor (General in Council after consulting the Local Government power to declare any area to be a protected area, and vests all rights in antiquities found in such area in Government. Any person removing an antiquity from a protected area will be guilty of theft. Proposed section 20A gives the Governor General in Council power to make rules to regulate excavation in protected areas and to regulate the division of all antiquities found between Government and the licensee. Proposed section 20B will enable Government to require any land in which there have been important archaeological discoveries in order that the area may be properly developed either by Government's own agencies or by licensees or by both. —Notes on Clauses

Section 20 — The intention of the proposed section 20 is that when the Governor General in Council has reason to believe that antiquities exist in any area he should be empowered to protect them against destruction or removal and to preserve them for the benefit of the nation generally. Accordingly the section empowers him to declare the area to be protected and thereupon ownership and possession of all antiquities

* Substituted by Act 18 of 1932

stituted for the words "Governor
But in British Burma for the
(the G. B. Order of 1932)

† In British Burma in section 20 C omit the words "direct the Provincial Government to" and "and the Provincial Government may thereupon acquire such area or part (vide G. B. Order of 1932)"

buried in the area vest in the Government. The intention is not, however, to interfere in any other ways with the rights of the owners or occupiers of land in the protected area such as their rights to sink wells, excavate foundations for buildings, &c. on. We consider that the section does not bring this out sufficiently clearly and we have amended it accordingly. We have made a consequential amendment in clause (d) of sub-section (1) of proposed section 20A (now 20B). The other two sections as amended by us now definitely limit the powers of the Governor General in Council to the restriction and regulation of excavation for archaeological purposes. — *Report of the Select Committee*

Section 20A — The Bill as drafted provided merely for the declaration of a protected area and for the acquisition of the area if after investigation it is found that the area contains an ancient monument or antiquities of national interest and value. It made no provision whereby officers of Government or licensees would have power to enter upon a protected area in order to make the necessary investigations. We consider it desirable that officers of the Archaeological Department and licensees acting under the supervision of these officers should have this power, and that a statutory provision should be made for the payment of compensation to the owners or occupiers of land for all damages done. We have inserted a new section 20A accordingly where under these officers and licensees may enter upon any private land but only with the written permission of the Collector, who will see to it that the entry does not cause unnecessary inconvenience.

In this connection we considered the question of inserting a provision in the Act requiring that the stage of investigation should not be prolonged indefinitely to the prejudice of the owners and occupiers of land but we are of opinion that a statutory provision might be undesirably inflexible. We have, however, received an assurance from the Government that the rules will provide that ordinarily the stage of investigation shall not be allowed to continue for longer than one year and that after one year the area shall be either abandoned or acquired under the provisions of section 20C. — *Report of the Select Committee*

General

21 (1) The market-value of any property which the Government Assessment of market value or compensation is empowered to purchase at such value under this Act, or the *compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises 'in respect' † of such market-value or compensation, be ascertained in the manner provided by the Land Acquisition Act, 1894, ‡ sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable.

Provided that when making an inquiry under the said Land Acquisition Act, 1894, ‡ the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector, and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

Notes — Section 21 applies to the purchase of movable antiquities or relics and the compensation to be paid. In ascertaining the market value of such antiquities and the amount of compensation to be paid to adjacent owners for acts done under the Act, the provisions of Land Acquisition Act enumerated in s. 20 are to guide the Court. 42 B. 100—19 Bom. L. R. 937=43 Ind. Cas. 490.

22 A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

* Certain words after this repealed by Act 18 of 1932 have been omitted.

† Substituted by Act 18 of 1932.

‡ Act I of 1894.

Power to make rules

23 (1) The "Central Government" may make rules for carrying out any of

the purposes of this Act

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication

24. No suit for compensation and no criminal proceeding shall

Protection to public servants
acting under Act

lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power

conferred by this Act

THE INDIAN ARMS ACT, 1878

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* For the words "Governor General in Council" the words "Central Government" in the Order of 1937. But in Part II of the "Governor" (vide G. O. Order of 1937) have been omitted by G. O. Order of 1937.

THE INDIAN ARMS ACT, 1878.

ACT NO XI OF 1878

An Act to consolidate and amend the law relating to Arms,
Ammunition and Military Stores

Received the assent of the Governor General on 15th March, 1878

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores, it is hereby enacted as follows.—

Preamble

ing to arms, ammunition and military stores, it is hereby enacted as follows.—

Notes—This Penal Act should be construed in favour of the individual person in case of doubt 109 Ind Cis 511=29 Cr L J 525-A I R 1928 Nag 219 see also 15 A 129

I—Preliminary.

1 [This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India]*

Short title Local extent

Savings

But nothing herein contained shall apply to—

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of "any Government in British India" or by a public servant or "a member of either of the forces constituted by the Indian Territorial Force Act, 1920 or the Auxiliary Force Act, 1920,"† in the course of his duty as such public servant or 'member'‡

Legislative papers—For the Statement of Objects and Reasons see *Gazette of India* 1877 Pt V p 650 for discussions in Council see *Ibid* 1877 Supplement, pp 3016 and 3030 *Ibid* 1878 Supplement pp 435 and 453

Clause (b)—The sale by a public servant of a dagger under the provisions of a decree is attempted under this clause. How sale to give notice by s 5 of the Act *Bala Hiraza v Mulla Patel* J B 518 As regards Police officers going armed with dagger vide U B R 1907 4th Qr Arms 1

Criminal Procedure Code—As to trial of offences under this Act in a Presidency town—*Ide* s 184 of Act V of 1893

A licence granted under the Indian Explosives Act 1881 for manufacture possession sale transport or importation of an explosive may be given the effect of a like licence granted under the Indian Arms Act 1878—*Ide* Act IV of 1881 s 15

* In British Burma for the words within the brackets read as follows: 'This Act may have been substituted for the words order of 1937. But in British Burma for government.'

2. This Act shall come into force on such day as the "Central Government" * by notification in the Commencement. "official Gazette"† appoints

Commencement—The Act came into force on the 1st of October, 1878—*Vide* Notification No 1169 dated the 27th June 1878 *Gazette of India* 1878 Pt I p 289

Extent—This Act has been declared in force in the Sonthal Parganas Reg 8 of 1872, s 3 as amended by Reg 3 of 1899 s 3, in Upper Burma (except the Shan States), Act 13 of 1898 s 4 in the District of Angul (except s 15) Reg 3 of 1913, s 3, in Arakan Hill District Reg 1 of 1916 s 2 in the Pargana of Manpur Reg 2 of 1926, s 2 in Panth Papeoda by Reg 1 of 1929

†[3 On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Act

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.]

4 In this Act, unless there be something repugnant in the subject or context,—
Interpretation clause
'cannon' includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same

"arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms

"ammunition" includes also all articles specially designed for torpedo service and submarine mining rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint-gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre.

"military stores" in any section of this Act as applied to any part of "British India" § means any military stores to which the "Central

* The words 'Central Government' have been substituted for the words 'Governor General in Council in British India' by G. I. Order of 1937. But in British Burma for the words 'Central Government' read 'Governor' (*vide* G. B. Order of 1937)

† The words 'official Gazette' have been substituted for the words 'Gazette of India' in British India by G. I. Order of 1937. But in British Burma for these words read the word 'Gazette' (*vide* G. B. Order of 1937)

‡ This section has been repealed in British India by the Repealing Act of 1933 (I of 1933). But in British Burma this section is still in force

§ In British Burma read "British Burma" for 'British India' (*vide* G. B. C. of 1937)

Government" * may from time to time, by notification in the "official Gazette"† specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the "Central Government" * may from time to time so extend such section.

"license" means a license granted under this Act, and "licensed" means holding such license.

Scope—In order to fall within this section the weapons need not be in a serviceable condition. *Karmidin v Emperor* 1923 L 617=77 Ind Cas 1003=25 Cr L J 539

Includes—The word includes shows that the definition is not exhaustive. 1 Weir 654 see also A I R 1934 Cal 368=38 C W N 84=60 C 1477

for the test is to see the purpose agricultural purpose it does not fall R 340=23 Cr L J 594=68 Ind 199=A I R 1927 Lah 162, 5 R 3 The definition of arms in

the Indian Arms Act is not exhaustive and the true meaning must be arrived at by consideration of the circumstances in each case. Neither the length breadth nor the form of the blade of a weapon nor the handle affords any certain test of its classification as arms.

Whatever can be used as an instrument of attack or defence and is not an ordinary implement of domestic purpose falls within the purview of the Act. *Emperor v Palla Singh* 32 P R Cr 1918 49 Ind Cas 44=20 Cr L J 11 The intention of the maker as regards its purpose is the true criterion to consider whether an

3 Rang 27 (1) see also 5 Rang 3 which implement is primarily arm or not. *King Emperor v Jung* so show that a weapon or instrument defence and not as an article of

domestic or agricultural utility there is no reason why such weapon or instrument should not be held to fall within the category of arms. *Emperor v Kesar Singh* 20 P R 1000 C=23 P R 1001 C

Ira Raj 24 C 749=6 C L arms in the Arms Act is weapon is dangerous and within the meaning of this

3 The word arms except so far as the definition expressly includes other weapons must be understood to mean weapons of offence suitable for use in warfare. *Queen Empress v Aga Me* L B R (1898 1900) 416 *Dasi Uyyat* is not an arm. *King Emperor v Hamant* 5 L B R 207=3 Bur L T 91=8 Ind Cas 972 The purpose for which an implement is primarily used regulates whether it would in ordinary parlance be spoken of as an arm and if it is not so designed for use as a weapon of offence and defence although it may be used as such then it is not an arm. *Croft v Hamant Khan* 1 L B R 271

Sharp knife with tapering edge—A sharp knife with blade tapered gradually to a point, one edge of which is sharp up to the point, and is used for stabbing and thrusting. *Emperor* 51 C 573=81 Ind Cas L J 115=A I R 1923 Rang 43

Sword stick—A sword stick is a sword sheathed in a cane stick and comes within the definition of arms. *Emperor v Satish Chandra Poy* 31 C 749=6 C L J 751=11 C W N 971=6 Cr L J 277

character of the knife is changed e.g. by using *Emperor v Jung* B 1 5 L B R 180

=26 Ind Cas 133

gunbarrel is an arm. *Empress v Baricar*, 53=5 Cr L J 435 "M" 70

A revolver even if it is out of repair is non the less an arm within the definition of this section. *King Emperor v Samiullah* 6 P R 1908 Cr=14 P W R 1909 Cr=7 Cr L J 350=146 P L R 1909 see also 21 M 360 37 C W N 234=34 Cr L J 916

* The words "Central Government" have been read in the General in Council in British India by the words "Central Government" read the word "the" † Substituted by G I Order of 1937 the word "Gazette" (vide G B Order of 1937) read

A clasp knife is not an arm *Crown v Hamate Kyan* 1 L. B. R. 271 L. B. R. (1893-1900) 482, 417

A lathi is not an arm *Gajja v Emperor* 15 Cr L J 685=26 Ind Cas 133

Da's are not arms *Queen Empress v Nya Me*, U B R (1893 1900) 416, 68 Ind Cas 818

Spear—As the word spear is used in s 4 in contradistinction to spear head a spear cannot be held to include a spear head *Ram Rish v Emperor* 167 Ind Cas 937=38 Cr L J 511 1937 A L J 41=A I R 1937 All 228

Parts of arms—Arms include parts of arms and therefore *chhabis* may be arms *Empress v Kesar Singh* 20 P R 1300 Cr 32 P L R 1901 20 Cr L J 577=52 Ind Cas 103 see also 15 Cr L J 506 The possession of a gun barrel and nipple without a licence is in offence under s 19 (f) *Queen v Tippu* 7 M 70=1 Weir 658 The expression 'arms' include parts of arms Sword hilts are therefore arms within the meaning of the Act *Nur Din v Empress* 38 P R 1889 Cr Loose parts of some revolver in rusty condition capable of being used as fire arms are "arms" within the meaning of the section 37 C W N 234=A I R 1933 Cal 495 Bolts and bores of rifles are arms 25 Cr L J 539 77 Ind Cas 1003 A I R 1937 Nag 213=38 Cr L J 639

Serviceable or not—In order to fall within this section the weapon need not be in a serviceable condition *Karm Din v Emperor* 1923 Lah 617 A revolver the trigger of which is out of order is a fire arm within the meaning of this section In such cases the question is not so much whether the particular weapon is serviceable as a fire arm, but whether it has to its specific character and has so ceased to be a fire arm Whether in any particular case the instrument is a fire arm or not is a question of fact to be determined according to the circumstances *Queen Empress v Jayaramu reddy*, 21 M 360 1 Weir 659, 6 M 60 (E O) A I R 1923 Lah 617 A broken unserviceable gun is not an arm 1 Weir 658

Ammunition—An empty cartridge case comes within the definition of ammunition *Emperor v Aladin* 21 A L J 878 46 A 107=1924 A 215=L R 5A 22 Cr, *In re Rangaswamy Ajar* 4 Ind Cas 400 *Emperor v Ebrahim*, 7 Bom L R 474=2 Cr L J 449 *Emperor v Dhopal* 37 Cr L J 727=1936 A L J 657=A I R 1936 All 392, 7 Bom. L R 474 but see 47 A 629 The definition of ammunition given in this section is not exhaustive and the question whether a certain article falls within its purview is to be decided according to the circumstances of each case Lead moulded into bullets of 20 to 24 bore is ammunition *Sant Singh v Crown* 23 P W R 1910 Cr -16 P R 1610-6 Ind Cas 952=11 Cr L J 421-151 P L R 1910 *Emperor v Dhopal Singh* 162 Ind Cas 912=37 Cr L J 727=1936 A L J 657=A I R 1936 All 392 *Ialakas* are not ammunition 53 A 226=32 Cr L J 564-1930 A L J 1467, 1931 All 17

II—Manufacture, Conversion and Sale.

5 No person shall manufacture, convert or sell, or keep, offer

Unlicensed manufacture con
version and sale prohibited

or expose for sale, any arms, ammunition
or military stores, except under a licence
and in the manner and to the extent

permitted thereby

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same, but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address

Sale by Nazir of a Court—Where the Nazir of a Court sells the arms in execution of and therefore thing for the and a

Manufacture of rockets—The manufacture or possession of fire works including rockets which are mere fire works does not come within the provision of this section.
Queen v Suppi 5 M 159

appears neither in the provision
 nally the word 'convert' being
 cannot be construed to include

Sale of gun used for private purpose—The sale of a gun used for one's private purpose, after giving notice to the Magistrate but before the receipt of his permission is not an offence under s 19 (b) of the Act—*In re Lenkish* 1 Weir 657

Licence converting it into percussion gun—A person holding a licence for match lock cannot be convicted for possessing a percussion gun where the defence is that for convenience's sake, he had the original gun altered from match lock. 10 M 131=1 Weir 665

Keeping arms for sale—Dagger shaped clasp knives—A man can be convicted for keeping dagger shaped knives in contravention of this section 11 Jur L R 183=3 L B R 1=2 Cr L J 372

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 in the 2nd schedule
Dasta Singh 1923

III—Import, Export and Transport

6 No person shall bring or take by sea or by land into or out of [British India]* any arms, ammunition or military stores except under a licence and in the manner and to the extent permitted by such licence.

Unlicensed importation and
 exportation prohibited

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition, but the Collector of Customs or any other officer empowered by the "Central Government"† in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the "Central Government"‡ thereon

Explanation—Arms ammunition and military stores taken from one part of [British India]* to another, by sea or across intervening territory not being part of [British India]* are taken out of and brought into [British India]* within the meaning of this section

Any other officer—In A...

7 Notwithstanding anything contained in the Sea Customs Act, 1878 ‡ no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the "Central Government"†

Sanction of central Govern-
 ment† required to warehousing
 of arms etc

Government†

* For "British India" read "British Burma" in British Burma (vide G B Order of 1937)

† The words "Central Government" have been substituted for the words "Local Government" in British India by G B Order of 1937. But in British Burma read the word "Governor" for the words "Central Government" (vide G B Order of 1937)

‡ VIII of 1878

8 [Law of du us on arms etc imported by sea] Repealed by the Repealing and Amending Act 1891 (VII of 1891)

9 [Power to impose duty on import by land] Repealed by the Repealing and Amending Act, 1891 (VII of 1891)

10 The "Central Government" may, from time to time by notification in the "official Gazette" +—

(a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of [British India]† or any part thereof either altogether or except under a licence and to the extent and in the manner permitted by such licence, and

(b) cancel any such notification

Explanation — Arms, ammunition or military stores transhipped at a port in [British India]† are transported within the meaning of this section

11 The [Central Government]§ may, at any places along the boundary line between [British India]† and [foreign]‡ territory and at such distance within such line as it deems expedient establish searching posts at which all vessels, carts and baggage-animals and all boxes bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by [Central Government]¶ in this behalf by name or in virtue of his office

12 When any person is found carrying or conveying any arms ammunition or military stores, whether covered by a licence or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them or that the same may be used for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him

Any person so apprehended and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police officer shall be delivered over as soon as possible to a Police-officer

Arrest of persons conveying arms etc under suspicious circumstances

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All persons apprehended by, or delivered to a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate

IV—Going armed and possessing Arms, etc

Prohibition of going armed without licence

13 No person shall go armed with any arms except under a licence and to the extent and in the manner permitted thereby

Any person so going armed without a licence or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the 'Central Government' * in this behalf by name or by virtue of his office

for gymnastic purpose is going armed A I R 1930 B 174=126 Ind Cas 881=31 Cr L J 1109=32 Bom L R 571

Servant with master's gun—A servant who is under moral restriction not to use his master's gun cannot be said to go armed with the gun simply because he carries it by his master's order U B R (1897 1901) Vol I 1 see also A W N 1891 7 4 N L R 78=8 Cr L J 18

Going armed—The term going armed in this section means 'carrying arms'—*In re Venkatarajadri* 1 Weir 663 see also L B R (1893 1900) 281

arms only in the presence of the master 20 C 444

Reservist—The notification of Government of India exempts all soldiers in the service of Her Majesty the Queen Empress of India from the operation of certain provisions of ss 13 to 16 of this Act The term soldiers also includes reservists 1 I R 1902 Cr =5 P L R 1902

Servant—The servant of a person exempted from the operation of this Act commits no offence by carrying his master's gun and shooting game with it with his master's permission 51 Ind Cas 203 see also *Ropal v Eyeror* 38 Ind Cas 320 18 Cr L J 297

14 No person shall have in his possession or under his control any cannon or fire arms, or any ammunition or military stores except under a licence and in the manner and to the extent permitted thereby

* The words 'Central Government' have been substituted for the words 'Local Government' by G I Order of 1937 But in British Burma for the words 'Central Government' read the word 'Governor' (vide G B Order of 1937)

[Section 32, clause (2), of Act No. XXXI of 1860 applies at the time this Act comes into force or to which "Central Government" may by notification in the "official Gazette"† specially extend this section, no person shall have in his possession any arms of any description, except under a licence and in the manner and to the extent permitted thereby]

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Military Stores — *Da s* spears and forks do not come within the term "military stores" — U B R (1892 1896) Vol II

Servant of a commissioned officer — Where a *Habildar* has been promoted on the 30th August to the rank of a *Jamdar* with retrospective effect from 1st June, his servant committed no offence by carrying his gun on the 22nd June without a licence 27 P R 1885 Cr

An old fashioned muzzle — Loaded gun barrel in good condition and with the touch hole in good order is a fire arm within the meaning of this section 8 N L R 53=5 Cr L J 435

A gun barrel so long as it can be used as a gun barrel is an arm within the definition of section 4 because it is a part of a fire arm But it is not a 'fire arm' within the section 12 C

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tion of guns is punishable 29 Cr L J 472=109 Ind Cas 120=10 Lah L J 302=1928 Lah 759

15 In any place to which [section 32, clause (2), of Act No. XXXI of 1860 applies at the time this

Possession of arms of any description without licence prohibited in certain places

Act comes into force or to which "Central Government" may by notification in the "official Gazette"† specially extend this

section, no person shall have in his possession any arms of any description, except under a licence and in the manner and to the extent permitted thereby

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Possession — Possession of arms for purpose of repairs is not punishable 119 Ind. Cas 13(2)=90 Cr L J 984—A I R 1929 A 720 Possession does not mean control 8 Cr L J 18, see also 20 Cr L J 432 13 Cr L J 525

ted for the words 'the Local
General in Council' by G I
de G B Order of 1937)
for the words 'local official
ad 'Gazette' (vide G B Order

† For the words within brackets substitute the words 'the Governor may by notification' in British Burma by G B Order of 1937.

16 (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a licence or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station or, at his option and subject to such conditions as the "Central Government" * may by rule prescribe, with a licensed dealer.

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the "Central Government" * may by rule prescribe be entitled—

(a) to receive back anything so deposited the possession of which by him has become lawful, and

(b) to dispose, or authorize the disposal of anything so deposited by sale or otherwise to any person whose possession of the same would be lawful, and to receive the proceeds of any such sale.

Provided that nothing in this sub-section shall be deemed to authorize the return or disposal of anything the confiscation of which has been directed under section 24

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty

(4)(a) The "Central Government" * may make rules consistent with this Act for carrying into effect the provisions of this section.

(b) In particular and without prejudice to the generality of the foregoing provision "the Central Government" * may by rule prescribe—

(i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and

(ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3)

Legislative changes—This section has been substituted by Act 20 of 1919

Confiscation—An order confiscating a gun because of mere delay in renewing the licence to possess it is illegal. The imposition of a fine and detention of the gun in the police station till the production of the licence would be a proper order. *In re Kattura Isalter*, 16 Cr L J 21 22 Ind Cas 165

V—Licenses

17 The "Central Government"† may from time to time, by notification in the "official Gazette"‡ make rules to determine the officers by whom the form in which, and the terms

* The words "Central Government" have been substituted for the words "Local Government" in Burma for the words "the Government" in British Burma.

† The words "Governor" have been substituted for the words "Governor" in British Burma.

‡ The words "Gazette" have been substituted for the words "Gazette" in British Burma read the word "Gazette" (vide G. B. Order of 1937).

and conditions on and subject to which, any licence shall be granted, and may by such rules among other matters—

(a) fix the period for which such licence shall continue in force,

(b) fix a fee payable by stamp or otherwise in respect of any such licence granted in a place to which section 32, clause 2, of Act No XXXI of 1860, applies at the time this Act comes into force or in respect of any such licence other than a licence for possession granted in any other place,

(c) direct that the holder of any such licence other than a licence for possession shall keep a record or account, in such form as the "Central Government" † may prescribe, of anything done under such licence, and exhibit such record or account when called upon by an officer of Government to do so,

(d) empower any officer of Government to enter and inspect any premises in which arms ammunition or military stores are manufactured or kept by any person holding a licence of the description referred to in section 5 or section 6,

(e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered, and

(f) require the person holding any licence or acting under any licence to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do

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Cancelling and suspension of
licence

18 Any licence may be cancelled or
suspended—

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, [or Commissioner of Police in a Presidency-town,] ‡ within the local limits of whose jurisdiction the holder of such licence may be, when, for reasons to be recorded in writing, such officer, authority, [Magistrate or Commissioner] § deems it necessary for the security of the public peace to cancel or suspend such licence, or

(b) by any Judge or Magistrate before whom the holder of such licence is convicted of an offence against this Act, or against the rules made under this Act, and
"the Central Government may by a notification in the official Gazette,

such licence other

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cancel or suspend all or any licences throughout the whole or any portion of British India' *

VI--Penalties

For breach of sections 5, 6, 10, 13 to 17. 19. Whoever commits any of the following offences (namely) :—

(a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;

(b) fails to give notice as required by the same section,

(c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6,

(d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10;

(e) goes armed in contravention of the provisions of section 13;

(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15,

(g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep,

(h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (e), he is required to exhibit, or

(i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Scope—Act or omission under s 411 I P Code and s 19 is not same 34 Cr L J 1018=1933 A L J 523—A I R 1933 All 461 Where weapon has been handed over is no offence 37 C W N 93=60 and in corn bin, amongst ghee, Arms Act 34 Cr L J 517=55 nds being charged with s 120 B, of arms at the time of arrest A I R 1933 Lah 231

Sanction—In the District of Bijnor and other parts of those provinces that lie to the north of the rivers Jumna and Ganges the sanction of the District Magistrate is not necessary for a prosecution under s 19 of the Arms Act L R 6 All 196 Cr

Joint trial—Joint trial of offences under s 19 and s 29 Frontier Crimes Regulation and separate sentences passed to run consecutively is proper and whole order is appeal able A I R 1933 Pesh 90

Clause (a)—Where the accused who had a licence under the Explosives Act to manufacture and sell gun powder and fire works on certain premises manufactured fire works at a different place held that the accused could not be committed under this Act In re Ramaswami Pillay 1 Weir 656

The mere possession or sale of fire works without a licence, is no offence under the Arms Act But the possession of gun powder without a licence even though for the innocent purpose of making fire works is an offence In re Boyanapalli Venkatarajee, 1 Weir 655

There is nothing in this Act or the rules which renders a sale of sulphur and ammunition by the agent of a licence-holder illegal Queen Empress v Sitharamayya, 12 M 473=1 Weir 655

* The words within quotations have been substituted by C. I. O. 2 = 1900 In India In British Primary Education substituted suspend all or his administrative

The exhibit knives are not arms 7 Bur L T 160=15 Cr L J 585

Being in possession of a *chhatra* and keeping it hidden is simply punishable under s 19 cl (a)—33 P L R 1914

Clause (b)—A gun was found in an abandoned room of the house belonging to the accused in which the accused who was a member of a joint family and others resided it appeared from evidence that the room was accessible from outside. The accused was convicted under this clause. *Hell* that if the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them and the conviction of the accused could not be sustained 21 C W N 837

Clause (c)—As soon as a person lands in British India with a revolver which he is not lawfully entitled to possess in this country he commits technically an offence under s 19 (c) of the Act. It is not necessary that there should be any particular intention in the mind of an offender to complete the offence punishable under this section. *In re Mahomed Ismail Poulter* 35 M 596

Clause (d)—Where the accused ordered a gun without a licence from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account and the transporting was done by the dealer in Bombay and was duly covered by a licence the accused is liable to prosecution on receipt of the gun for possessing it without a licence under R 22 of the Indian Arms Rules but he cannot be prosecuted under s 19 (d) of the Indian Arms Act for transporting the gun in contravention of the prohibition under s 10 1929 M W N 807=19.9 Cr 607—A I R 1929 Mad 864=57 M L J 520. In case of prosecution for transporting cartridges in contravention of Arms Act prosecution must prove that cartridges exceeded number allowed by licence 34 Cr L J 190=34 P L R 113 A I R 1933 Lah 166. A Sikh carrying kirpan is not guilty A I R 1930 Bom 153

Clause (e)—A man who is found going about with a pistol gun sword or other weapons within the definition of arms in s 4 of the Act must, in the absence of proof to the contrary be presumed to be carrying it with the intention of using it should an opportunity for using it arise and unless he is licensed to carry the weapon and is not exceeding the terms of his licence he may be properly convicted under s 19 (e) of the Act. *Queen Empress v Bhure* 15 A 37=A W N 1892 221

For the purpose of conviction under clause (e) there must be some clear evidence to prove the intention on the part of the accused going armed to use the weapon. In the absence of such evidence the conviction of the accused under s 19 (e) of the Act is not sustainable. 1925 Mad 585=26 Cr

licensee cannot use it

as soon as the licensee is armed

Servants and retainers of exempted persons under Notification No 588 dated 6th March 1899 as amended by Notification No 458 dated 18th March 1898 is not entitled to use arms without a licence 14 C P L R 112. Possession of gun by servant on behalf of his master for short time is no offence 14 P L T 653=A I R 1933 Pat 600

n offence under
accused should
the said Acts

test whether it is

arm or not. A clasp knife is not a dagger and is not designed or suitable for warfare. Therefore it does not come within the definition of arms L B R (1893 1900) 487

The accused who was a cousin of the licensee of a gun borrowed the gun and carried it in a marriage procession when he fired some shots and wounded some

A person who carries about a gun without the ammunition for using it is still armed within the meaning of the Arms Act. He is punishable under this clause

The Arms Act does not require a person who holds a licence for a gun or

weapon to carry it on his person whenever he has the gun with him *Emperor v Muhammad Ibrahim* 24 O C 265 see also 20 C 444 1 Weir 661

Second class Magistrate —A Magistrate of the second class has the power to try an offence under this clause 1 Weir 660

Dahmyaung —The meaning of *Dahmyaung* in the Burmese translation of the Arms Act must be limited to the meaning of dagger L B R (1893 1900) 320

The term going armed in s 13 means carrying arms 1 Weir 663 A W N 1891 203 A I R 1925 Sind 177

clause because under cl (f) of s 2
ted from operation of ss 13 to 16 of
227
he carries it from his master's house
ith for the purpose of repair without
A 279 see also 24 A 454—A W

Clause (f) —Where two of the accused were found lying on a bed in the house of another and in the bedding a *chharri* was found wrapped in a cloth held that it was impossible to say which of the accused was in possession of it 65 Ind Cas 447 This clause was never intended to cover a case of two person making temporary use of a revolver in order to foist a false case on another That two people should jointly own a single revolver is itself an unusual circumstance 1937 M W N 572 A person who carries an unlicensed gun of his master is technically guilty of an offence under s 19 (f) of the Arms Act But in the absence of proof that the servant had any knowledge that the gun which he was carrying for his master was unlicensed the offence of which he is guilty does not call for a severe punishment *Emperor v Lalman* 167 Ind Cas 352=88 Cr L J 409=18 P L T 63—A I R 1937 Pat 347 Exclusive possession must be proved in order to justify a conviction under this section A I R 1937 Lah 561 Where the only evidence for the prosecution is that a miscellaneous collection of arms and ammunition was found in a house belonging to the accused it is not safe to convict him of an offence under this clause where there is no clear evidence that the accused was living in the house until within a short period before the discovery *Rama linga v Emperor* 46 L W 522=(1937) 2 M L J 620 A person licensed to possess gun cannot authorise the possession of that gun by his servant for an unlawful purpose Therefore a servant who is in possession of that gun for an unlawful purpose can be
Act *Nand v Emperor* 159 Ind Cas

the accused is found in possession of arms s 15 of the Act and the commission of the offence is not dependent upon whether the search was or was not conducted in the manner provided by s 25 or s 30 *Pershad Dahai v Emperor* 159 Ind Cas 487—16 Pat L T 598=A I R 1935 Pat 465

A Sikh possessing or wearing on sword commits no offence under this section by virtue of the exemption under Sch II 3 (b) of the Act 6 Lah L J 265—5 Lah 308 Possession or control of arms implies actual possession or control of arms A I R 1934 Oudh 200 35 Cr L J 943 11 O W N 534 Every case must be decided on its own facts A I R 1934 All 548 As regards meaning of in possession and control *vide Ibid* Licence is necessary for each separate weapon A I R 1934 Cal 368 Mere possession is punishable under s 19 while concealment is punishable under s 20 60 C 545=34 Cr L J 879—A I R 1933 Cal 516 Possession of arms after expiry of licence even for a month is offence 37 C W N 93=60 C 445=A I R 1933 Cal 218=34 Cr L J 363 Accused in possession of revolver and attempting to run away with it is guilty under s 19 (f) read with s 20 A I R 1933 All 627=1933 Cr C 1006 Person cannot be convicted under both sections in respect

L R 810=50
th disregard of
(f) 81 P L

An accused who uses his father's gun is guilty under this clause *Mahomed Hasan v Emperor*, 21 A L J 1095

Held that a person carrying a revolver in his pocket without a licence to keep arms is guilty only under s 19 (b) and not under section 20 *Udham Singh v The Crown*, 27 P W R 1915

Where the residents of a person and certain other persons were convicted under s 19

an article found therein is in the possession of the head of the family and this presumption is not rebutted by the
 718-30 Cr L J 668-A 80 years 116 Ind Cas
 681 99 Cr L J 838- 80 also 169 Ind Cas
 573 15 Pat 696 147 In 'at 512=17 Pat L T
 1931 All 548 L J 866=A I R

An instrument which consists of two separate pieces, a *lathi* 6 feet 3 inches long at one end of which is a hollow screw and an axe like blade 5' x 4½" which blade has a screw to allow of its being fixed into a long *lathi* is an arm under s 19 (f) of the Arms Act 9 Lah 13-29 P L R 306=114 Ind Cas 49-A I R 1928 Lah 295

For the purpose of supporting a conviction under this clause the articles discovered must be clearly proved to have been in the possession of the accused 86 Ind Cas 480, 27 A L J 28-116 Ind Cas 29=30 Cr L J 566-A I R 1929 All 68 The fact that a person's house on being searched for stolen goods was found to contain two empty cartridge cases does not amount to an offence under this clause because the cases in
 455=L R 6 A
 here the brother
 riots no offence
 is 523=A I R
 d for posse-
 I R 1925 All
 ed on accused a
 cused *Emperor*
 Cr L J 910

Joint possession—Where a *chhatra* was found in a house admittedly in the joint possession of the accused and the one of the accused was the owner of the gun
 benefit
 ed gun
 all adult
 1=1931
 ner but
 N 201
 gun are
 which
 32 Cr
 und in
 Where accused
 with his father

Sanction—There must be an express sanction for prosecuting a man under the section 20 *Nga Tia v Emperor* 2 Bur L J 392 496 U B R (1892 1896) Vol I I B R (1892 1896) Vol I, 2, 5 M L J 100 19 (f), Arms Act but not for consi- me Act A I R 1931 Nag 71 Pr

*[Provided that if an offence committed under this section in respect of a pistol, revolver, rifle or shot-gun, the offender shall be punished with transportation for life or any shorter term or with imprisonment for a term which may extend to fourteen years or with fine']

the act of a person whose house is being

reduced from seven years to one
Lah 365 In the case of person
in pocket or inside clothes does
850 31 Cr L J 890 A I R

1930 Pat 493

The first part of this section does not apply to cases of concealments or of attempts at concealment made by a man who has arms on his person or in a bag which he was carrying or which is otherwise in his immediate personal possession only on being arrested. It is meant to deal with cases of concealment before arrest. Where a man finding himself arrested for being in possession of a revolver attempts to throw it among the bush the act of such person would only come under s 19 cl (f) 9 M L T 475=12 Cr L J 234=10 Ind Cas 261

to his skin does not indicate any
head might not be known to any

ed by the constable indicates an
accused had a companion
could be found as no such
also ran away it cannot be
142

own facts as to whether it
be some special indication
blic servant railway officer
J 577=A I R 1928 Lah

193

h section 19 (f) should be treated

it is difficult to see how an offence
son unless an offence under one of
mitted therefore before prosecution
action should be obtained 27 C

Magistrate 2 L B R 244
the import or export of arms 13

attempted. It does not apply to ordinary cases of concealment of arms 9 P R 1912 Cr
It is not the law that s 20 of the Arms Act
arms and it is not necessary to make the
an act, in the matter of unlicensed possession
export or import of arms 60 C L J 190=38 C W N 600=A I R 1904 Cal 1004

or a blade of a
on in his pocket
found it cannot
103 Ind Cas

207=28 Cr L J 671-A I R 1927 Lah 561 This section is not applicable to ordinary cases of concealment. Where however the circumstances under which a pistol is recovered from the accused leads to a clear inference that his intention was that the possession of the pistol by him may not be shown to any public servant the accused must be convicted under this section 96 Ind Cas 890=27 Cr L J 934

The maximum sentence must not be inflicted in every case merely because the weapon found to have been concealed is a rifle 8 P R 1915 Cr see also 10 P L R 1919=52 Ind Cas 193 3 Lah L J 145 34 Ind Cas 672

Empty cartridge cases with exploded caps are not ammunitions as defined in the Arms Act. An instrument for re-capping cartridge cases of the Martini Henry rifles is not machinery for manufacturing ammunition within the meaning of the Act 20 P R 1880 Cr

Where on a search made by a Magistrate with a number of police officers into the house of the accused person who after his licence for possession of arms and ammunition had been cancelled was suspected of being in possession of them and who was preliminary to the search arrested and some arms and ammunition were found on the premises and the accused was committed to sessions and convicted of offences under ss 19 and 20 of the Arms Act held that the conviction under s 20 of the Act was not legal but that the accused should be taken to have had in his possession or under his control, arms and ammunition as defined by the Arms Act within the meaning of sub section (f) of s 19 and therefore the conviction under that section should be confirmed 27 C 692=4 C W. N 750

Where the arms were discovered on the information given by the accused the concealment of the arms recovered from the possession of the accused was clearly with the intention referred to in this section *Ali Akbar v Emperor* 1923 Lah 494 see also 1923 Lah 10 1923 A 33 (2) 1923 Lah 79 76 Ind Cas 571 12 P L R 1922, 68 Ind Cas 833 20 A L J 835

In every case it is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to use it as a person's arm 9 Lah A I R

1923 Lah 110

Prosecution under section 20 prior to sanction to prosecute under s 19 (f) is not bad A I R 1931 Sind 9

Conviction under s 20 implies intention that possession of arms should not be known by public servant A I R 1931 Sind 9 see also 38 C W N 656=60 C L J 190=A I R 1934 Cal 705

This Act is applicable to a case of possession of an arm contrary to the provisions of the Arms Act when he has concealed the arm in his waist band or loin cloth 75 P L R 1915

This section applies when the possession of arms is such as to indicate an intention that such act may not be known to any public servant or where the import or export of arms is attempted

Cas 221=6 La
10 94 Ind Cas
chadder worn by
s 19 89 Ind C

* '20A Notwithstanding anything contained in this Act,

Enhanced punishment in certain cases whoever goes armed with a pistol, revolver, rifle or other fire-arm in contravention of the provisions of section 13 or has any

such fire-arm in his possession or under his control in contravention of the provisions of section 14 or section 15, under circumstances indicating that he intended that such fire-arm should be used for the commission of any offence of murder, shall, if he is tried by Commissioners appointed under the Bengal Criminal Law (Amendment) Act, 1925, be punished with death or with transportation for life or any shorter term or with imprisonment for a term which may extend to fourteen years, to which fine may be added

* Section 20A has been added for the Presidency of Bengal by the Bengal Criminal Law (Amendment) Act of 1931 (VII of 1931)

Cr C H Vol I-11

21 Whoever, in violation of a condition subject to which a licence has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

22 Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same, or

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

Notes—From s 22 (1) of the Act it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant *Emperor v Mithundo* 4 N L R 78=8 Cr L J 18

The delivery into possession contemplated by this section is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm 5 L B R 83 8 I R 166 Cr

If the manager of a licensed vendor of arms and ammunition sells military stores to a person without previously ascertaining that he is legally authorised to possess the same the licensee becomes liable to punishment under this section 24 B 423=2 Bom L R 52

and
that
con
100

within the meaning of notification of Bombay Government under Indian Arms Rules 1914 A I R 1933 Bom 438=35 Bom L R 884

23 Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees or with both

24 When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms ammunition or military stores, and any vessel cart or baggage, animal used to convey the same, and any box, package or bale in which the same may have been concealed together with the other contents of such box package or bale shall be confiscated

Notes—This section shows that the order for confiscation

of any sentence of imprisonment in excess and such precaution 157 Ind

VII—Miscellaneous

25 Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose, or

that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a licence, in safe custody for such time as he thinks necessary

The search in such case shall be conducted by, or in the presence of a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Central Government *

Scope—Sections 25 and 30 were enacted for the protection of the subject as well as to inspire confidence in the proceedings conducted by the police-officers. But it is conceivable that there may be cases of an exceptional nature where in view of the exigencies of a situation demanding immediate action the provisions of ss 25 and 30 cannot be strictly complied with and in such cases if unimpeachable evidence is offered by the prosecution to prove that the accused was in fact found to be in possession of certain incriminating articles the prosecution cannot fail merely because the search was not made in strict

1935 Pat 465

Search of a house may be made if it was not ordered by a Magistrate in
) Vol I 1 see also 471 575-23 A L J
2 T J C 109 (2)-1 T D 1077 A L J 516 =

house to be made
not justify the search
C L J 70-12 C W N 773

Imperor 114 P L R 1903

When a statute creates a special right but certain formalities have to be complied with antecedent to the exercise of that right a strict observance of the formalities is

if it is proposed to search weapons
48

stated by the accused, who was in possession of arms the fact that the legal procedure as laid down in this section was not followed in making the search would not by itself, be sufficient grounds to acquit the accused U L R (1892 1896) Vol I 2

* The words, Central Government have been substituted for the words, Government in British India by G O Order of 1937 But in British Burma for the Central Government read the word Governor (vide G O Order of 1937)

In order to prosecute a person for being in possession of guns without sanction, Collector's sanction for the prosecution should be obtained under this section 5 M 26=1 Weir 662, 35 M L J 689

26 The "Central Government" may at any time order or cause seizure and detention by to be seized any arms, ammunition or "Central Government" military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety

27. The "Central Government" may, from time to time, by notification published in the "official Gazette,"†—
Power to exempt.

(a) exempt any person by name or in virtue of his office, or any classes of persons, or exclude any description of arms or ammunition, or withdraw any part of [British India] § from the operation of any prohibition or direction contained in this Act, and

(b) cancel any such notification, and again subject the persons or things or the part of [British India] § comprised therein to the operation of such prohibition or direction

Notes—A notification imposing penalty must be construed strictly A. I. R. 1930 Bom 153.

Army Regulation—The Army Regulation 1121, 1912, is in force in the Government of India. P. R. Cr 1902=5 from the operation of this Act. A. W. N 1899 21 under this section. Queen

read as synonymous
18 Ind Cas 596=29
Government of India
1=34 Cr L J 119

28 Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military

* The words 'Central Government' have been substituted for the words "Local Government" in British India by G. I. Order of 1937. But in the words 'Central Government' read the word 'Governor'.

† The words 'Central Government' have been substituted for the words 'Central Government' in British India by G. I. Order of 1937.

‡ The words "official Gazette" have been substituted for the words "Gazette" by G. I. Order of 1937. But in the word 'Gazette' (vide G. B. Order of 1937).

§ In British Burma for the words "British India" read the words "British Burma" (vide G. B. Order of 1937).

stores in respect of which an offence against this Act has been or is being committed

Notes—By entering the charge in the office diary or preparing the charge sheet no criminal proceedings are instituted within this section those acts being merely routine and administrative 46 C L J 35=104 Ind Cas 433=28 Cr L J 817=A I R 1927 Cal 721

29 Where an offence punishable under section 19, clause (f), has been committed within three months from the date on which this Act comes into force in any province district or place to which section 32 clause 2 of Act XXXI of 1860, applies at such date, or where such an offence has been committed in any part of [British India]* not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district, or, in a Presidency-town of the Commissioner of Police †

Date—The Act came into force on the 1st October 1878

Act 31 of 1860—Act 31 of 1860 was repealed by s 3 of this Act

Sanction

be instituted
has been obt
and the absen

Gopal v E
856 A I R

A I R 1929 All 68 The trial of an offender under s 19 (f) Arms Act without the District Magistrate's sanction under this section is not merely an error of procedure The Court has no power to allow proceedings to be instituted without such sanction No failure of justice is necessary to set aside a conviction under the section made in proceedings without such sanction The District Magistrate in such a case may, however order a fresh sanction of the offence if he wishes to do so *Queen Empress v Ba Tun U B R* (1892 1896) Vol 1 2 A conviction under section 19 (f) is illegal

In re Abdul Kadir
ase under Arms Act in
strate A I R 1933
ag strate is necessary in

Peshwar and also in four other districts A I R 1933 Pesh 69 1933 Cr C 130J
No sanction is necessary in case of an offence under s 20 A I R 1934 Cal 705=38 C
W N 656=60 C L J 190

Scope—This section provides that where an offence punishable under s 19 (f) has been committed in any place to which s 32 cl 2 of Act 31 of 1860 applies within 3 months from the date on which Act 11 of 1878 comes into force the previous sanction of the Magistrate of the district or in a Presidency town the Commissioner of the Police is a condition precedent to a prosecution for such offence *Sunder Singh v Crown* 24 P R 1913 Cr -14 Cr L J 688

Section 20—Ss 19 and 20 of the Act are so interwoven that it is difficult to see how an offence can be committed under the f one of the enumerated sub sections in s 19 prosecuting a person under s 20 of the *Akmed v Queen Empress* 27 C 692=4 C 2 Bur L J 203 8 L B R 452 (F B)

Previous sanction—A charge under section 19 (c) can be amended into a charge under section 19 (f) and subsequently a sanction may be obtained *Aaha v King Emperor* 4 L B R 247=8 Cr L J 65

Proceedings—The proceedings in s 29 means legal proceedings in Court and not searches or arrests or investigation made by the police in the exercise of the powers

* In British Burma for the words 'British India' read the words 'British Burma' (vide G B Order of 1937)

† In British Burma for s 29 substitute the following section—

29 No proceedings shall be instituted against any person in respect of an offence punishable under section 19, clause (f) without the previous sanction of the District Magistrate

conferred upon them by law. The mere submission of a charge sheet by the police does not amount to institution of proceedings under s 29. 107 Ind Cas 833=29 Cr L J 301-65 Pat 768=A I R 1928 Pat 146

30 Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877, in the course of any proceedings

Searches in the case of offences against section 19, clause (f) how conducted

instituted in respect of an offence punishable under section 19, clause (f), such

search shall, notwithstanding anything contained in the said Code or Act be made in the presence of some officer specially appointed by name or in virtue of his office by the "Central Government" * in this behalf, and not otherwise

Notes—The expression "in the course of any proceedings instituted in this section" implies that proceedings must have already begun. Their effect is to cut down the general power of search under s 165 of Cr P Code by a police power. 23 A L J 364 L R 6 A Cr 124=47 A 575=88 Ind Cas 260=A I R 1920 All 434=26 Cr L J 1112

Search warrant—The Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. *Empress v Tegha* 8 C 473, 16 A L J 721=49 Ind Cas 801=19 Cr L J 349

Act IV of 1877—This Act has been repealed by Act 10 of 1882 see now Act 5 of 1898

31 Nothing in this Act shall be deemed to prevent any person

Operation of other laws not barred

from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the

rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act. Provided that no person shall be punished twice for the same offence

32 The "Central Government" * may from time to time, by

Power to take census of fire arms

notification in the "official Gazette," † direct a census to be taken of all fire-arms in any local area, and empower any

person by name or in virtue of his office to take such census

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both

33 No proceeding other than a suit shall be commenced against

Notice and limitation of proceedings

any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in

writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause

†ro been substituted for the words "Local r of 1937. But in British Burma for the Governor (vide C. B. Order of 1937)" n substituted for the words "local official 937. But in British Burma for these words 1937]

[THE FIRST SCHEDULE]*

ENACTMENTS REPEALED

(See section 3)

Number and year	Title	Extent of repeal
XVIII of 1841	An Act for consolidating and amending the enactments concerning the exportation of military stores	So much as has not been repealed
XXX of 1854	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces	In the preamble the words and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited Section 11 †
XXXI of 1860	An Act relating to the manufacture importation and sale of Arms and Ammunition and for regulating the right to keep and use the same and to give power of disarming in certain cases	So much as has not been repealed
VI of 1866	An Act to continue Act No XXXI of 1860 (relating to the manufacture importation and sale of arms and ammunition and for regulating the right to keep and use the same and to give power of disarming in certain cases) and for other purposes	The whole
III of 1872	The Sonthal Parganas Settlement Regulation	So much of the Schedule‡ as relates to Act XXXI of 1860 and Act VI of 1866
XX of 1874	An Act for declaring the local extent of certain enactments and for other purposes	So much of the First Schedule as relates to Act XXXIII of 1841

THE SECOND SCHEDULE §

ARMS ETC LIABLE TO DUTY

[Repealed by Act VII of 1891]

CHAPTER I

The Indian Arms Rules 1924

[HOME DEPARTMENT NOTIFICATION NO F 820 I 22 (POLICE)]

DATED THE 3RD NOVEMBER 1913]

(is modified subsequently)

In exercise of the powers conferred by section 4 10 17 and 27 of the Indian Arms Act 1878 (XI of 1878) the Governor General in Council is pleased to make the following rules —

* The First Schedule has been repealed in British India by the Repealing Act of 1939 (I of 1939) But this Schedule has not been repealed in British Burma

† This Act was repealed by the Upper Burma Laws Act, 1886 (20 of 1886)

‡ The entry relating to Reg IX of 1874 has been repealed by Act VIII of 1913

§ A new Schedule has since been substituted for the Schedule here mentioned

1. Short title.—(1) These rules may be called the Indian Arms Rules, 1924.

(2) They shall come into force on the 1st January, 1924.

2 Interpretation.—(1) In these rules, unless there is anything repugnant in the subject or context,—

"District Magistrate" means, in the case of
in the case of the suburbs of Calcutta, as defined
tion, dated the 21st. September, 1880, The Co

le VIII; and

1878 (XI of 1878)

897), shall apply for the purpose of the
plies for the purposes of the interpreta-

Application of the Act.

3. Exemption, exclusion and withdrawal —
the arms and ammunition, and the parts of
Schedules I to IV are, respectively, exempted,
subject to the conditions therein specified fro
rections contained in the Act

Provided that the exemptions specified in Schedule I are made subject to the following conditions, namely —

(a) they shall not be deemed to render lawful the import of arms or ammunition
save from Berar or the transport within the Province of Burma of arms, ammunition or
military stores, through the medium of the Post Office ;

(b) save in the case of persons included in entry 1 (b), entry 2 or entry 6 (e) of
the said Schedule, any person so exempted shall register, in such manner as the Local
Government may prescribe, any fire-arm or ammunition for the same in respect of which
he is exempted from the operation of any provision of the Act ,

which he is so

azette of India,

18

4 Extension —For the purposes of the definition of "military stores" in section
or devices

Import

5 Restriction upon import of cannon and certain other articles —

(1) A licence for the import of—

(a) cannon,

(b) articles designed for torpedo service,

(c) war rockets, or

(d) machinery for the manufacture of arms or ammunition,

may be granted in Form I only by the Governor General in Council,

(e) continuous fire arms

(2) A copy of every licence granted in accordance with sub rule (1) shall forthwith
be sent—

(a) where the articles are consigned to a Presidency-town or Rangoon—to the
Commissioner of Police, or

(b) where they are consigned to any other place—to the District Magistrate of the
district in which such place is situated.

6 Restriction upon import of arms, ammunition and military stores from
granted for the import of any arms, ammunition

shall be deemed to limit or otherwise affect any
a licence for the import of ammunition which,
ing the licence, is intended in good faith for

7 Restriction upon import of certain rifles—(1) A licence shall not be granted for the import by sea or by river or land save from Berar—

of parts of
otherwise provided

use in rifles of 303 or of 450 bore, namely actions breech blocks breech bolts bodies magazine cases cocking pieces and breech blot leads or

(iii) of pistols or revolvers of 441 455 or any intermediate bore or of parts of or fittings for pistol or revolvers of such bores or save as otherwise provided by rule 98

so specified or

(c) of any arms or ammunition through the medium of the Post Office

(2) Nothing in clause (b) of said rule (1) shall be deemed to limit or otherwise affect any power conferred by these rules to grant save as otherwise provided by rule 6 a licence for the import of rifles or parts of or fittings for rifles which in the opinion of the authority granting the licence are intended in good faith for sporting purposes

8 Import of arms ammunition or military stores into certain ports—Save as otherwise provided by rules 5 to 7 a licence may be granted in Form II for the import by sea—

(a) of arms ammunition or military stores at a Presidency town or Rangoon—by the Commissioner of Police

(b) of arms ammunition or military stores at the ports of Calcutta Karachi Aden and Port Blair—by the District Magistrate

(c) of saltpetre or lead at the ports of Akhab and Moulmein—by the District Magistrate

(d) of sulphur in reasonable quantities at the ports of Tuticorin and Cocanada—by the Board of Revenue in Madras on satisfactory proof that the sulphur is required in good faith for medicinal manufacturing or agricultural purposes and

(e) of sulphur at the port of Chittagong—by the District Magistrate on satisfactory proof that the sulphur is required in good faith for manufacturing or agricultural purposes

Provided that all arms ammunition or military stores imported into Aden shall be landed at the Abkari Pier at Tawahi only and removed thence by the importer to such Government warehouse as the Political Resident may appoint in that behalf

Provided further that any consignment of sulphur imported at Chittagong and destined for a place outside that town shall be unloaded under the supervision of Customs officers direct from the ship into railway wagons which shall be rivetted and sealed on the jetty and shall be despatched direct to its destination without further handling or transhipment

9 Import of arms ammunition or military stores by sea from Madras, Rangoon or Bombay into certain ports—Save as otherwise provided by rules 5 to 7 a licence for the import by sea of arms ammunition or military stores—

(a) from the port of Madras into the ports of Tuticorin, Bimlipatam Cocanada Nagapattam Mangalore Gopalpore Vizagapatam Pamban or Masulipatam or

(b) from the port of Rangoon into the ports of Akhab Moulmein Sindoway Kyaukpada Tavoy Mergui or Victoria Point or

(c) from the port of Bombay into the port of Mangalore may be granted in Form II by the District Magistrate of the district in which the port of import is situated

of military stores—(1) Save as
port by land or river of arms,

assigned to a Presidency town or

the District Magistrate of the

and is exempted under
armed with or for

possessing such arms and

shall also cover the re-export of

are imported from a State in India

otherwise than under sub rule (2), a copy of the licence shall forthwith be sent to the Political Officer for such State.

(4) Where the arms, ammunition or stores are imported by road or river from elsewhere than Berar and are consigned to a district not on the frontier of British India, a copy of the licence shall forthwith be sent to the District Magistrate of the district into which they are consigned, and he may, in his discretion, require the licence to be taken out of the

(5) (a) Where the arms, ammunition or stores are imported by land or river from Berar under a licence, the importer shall deliver the licence, within six days of the

for this purpose

(b) Any officer to whom a licence is delivered under clause (a) shall satisfy himself—
(i) that the arms, ammunition or military stores correspond with the description given in the licence, and

delivered under sub clause (ii) of

by rail, a copy of the licence to the railway authorities at the place

to which such arms, ammunition or stores are consigned

11. Import from Berar.—A certified copy of a licence to export from Berar into British India arms, ammunition or military stores granted under the Berar Arms Rules, 1924, shall be deemed to be a licence for import into British India granted under these rules

12 Scrutiny by railway authorities of consignments—(1) The railway authorities require the licence to be produced and with the

(a) which, in any case referred to in sub rule (1)—

(a) the consignee fails to produce the original licence or
(b) the arms, ammunition or stores claimed by him do not correspond with the description given in such licence, or

(c) the licence is not identical in substance with the copy sent to the railway authorities,
such authorities shall not deliver the consignment and shall forthwith inform the nearest District Magistrate

13 Production and deliver of import licences—(1) The consignee of arms, ammunition or military stores imported from Berar shall—
(a) produce the licence to the railway authorities at the place to which the consignment is consigned, and
(b) deliver the licence to the District Magistrate of the district into which the consignment is consigned

place is situated

(2) Every officer before whom a licence is produced or to whom a licence is delivered under sub rule (1) shall satisfy himself—

(a) that the arms, ammunition or stores correspond with the description given in the licence, and

(b) that any deficiency is properly accounted for.

Export

14 Restriction upon export by sea of cannon and certain rifles.—(1) A licence for the export by sea of—

(a) cannon, or

(b) rifles or parts or fittings for rifles

or fittings for rifles which in the opinion of the authority granting the licence, are intended in good faith for sporting purposes

15 Export by sea of arms, ammunition or military stores from and to certain ports—(1) Subject to the provisions of rule 14 a licence for the export by sea of arms ammunition or military stores may be granted in Form IV—

(a) at a Presidency town or Rangoon—by the Commissioner of Police or

(b) at the port of Calcutta Karachi Dhanushkodi Tuticorin Cochin or Aden—by the District Magistrate

(2) Save as otherwise provided in sub rule (3) every licence, granted under sub rule (1) shall be for export either—

(a) to such one of the ports specified in clause (a) or clause (b) of sub rule (1) or

(b) in the case of export from the port of Madras—to such one of the ports mentioned in clause (a) of rule 9 or

(c) in the case of export from the port of Rangoon—to such one of the ports mentioned in clause (b) of rule 9 or

(d) in the case of export from the port of Bombay—to such one of the ports mentioned in clause (c) of rule 9 or

(e) to such other place in His Majesty's dominions outside India as may be specified or described in the licence

(3) A licence may be granted at any of the ports mentioned in clause (a) or clause (b) of sub rule (1) for the export by sea of saltpetre or lead to the ports of Akyab or Moulmein

(4) A copy of every licence of the nature referred to in clauses (a) (b) (c) and (d) of sub rule (2) and in sub rule (3) shall forthwith be sent—

(a) where the arms ammunition or stores are consigned to a Presidency town or Rangoon—to the Commissioner of Police or

(b) where they are consigned to any other place—to the District Magistrate of the district in which such place is situated

16 Export by sea of arms, ammunition or military stores from certain ports to ports in States in India or foreign territory—(1) (a) A licence for the export by sea of arms ammunition or military stores from any of the ports of Madras Bombay Calcutta

of which the
be granted in
the arms
nding entry of
a third column

ammunition or
charge of the
shall forthwith
tical Resident

concerned

(3) The authority granting a licence under this rule shall also send a copy of such licence to the agent or master of the vessel by which it is intended that the arms ammunition or military stores covered by the licence shall be shipped and such agent or master shall not receive for despatch any case or package containing arms, ammunition or military stores unless such case or package is accompanied by the original licence and shall satisfy himself—

(a) that the arms ammunition or stores correspond with the description given in such a licence and

(b) that the copy of the licence sent to him

(1)

(a)

(b)

description given in such licence or

(c) the licence is not identical in substance with the copy sent to him

such agent or master shall not receive the consignment for despatch and shall forthwith inform the nearest Magistrate

17 Export by land or river of arms, ammunition or military stores—(1) A licence for the export by land or river of arms ammunition or military stores to any place outside British India may be granted in Form VI—

(a) by the Governor General in Council, or

otherwise than under sub rule (2), a copy of the licence shall forthwith be sent to the Political Officer for such State

(4) Where the arms, ammunition or stores where than Berar and are consigned to a district copy of the licence shall forthwith be sent to the District Magistrate, and such Magistrate may, in his discretion, require the licensee to produce them for his inspection before allowing them to be taken out of the district.

(5) (a) Where the arms, ammunition or stores are imported by land or river from Berar under a licence, the importer shall deliver the licence, within six days of the

for this purpose

(b) Any officer to whom a licence is delivered under clause (a) shall satisfy himself—

(i) that the arms, ammunition or military stores correspond with the description given in the licence, and

delivered under sub clause (ii) of

by rail, a copy of the licence railway authorities at the place to which such arms, ammunition or stores are consigned.

11 Import from Berar—A certified copy of a licence to export from Berar into British India arms, ammunition or military stores granted under the Berar Arms Rules, 1924, shall be deemed to be a licence for import into British India granted under these rules

12. Scrutiny by railway authorities of consignments—(1) The railway authorities to whom a copy of a licence has been sent under sub rule (6) of rule 10 shall require the consignee to produce the original licence and shall satisfy themselves—

(a) that the arms, ammunition or stores claimed by him correspond with the description given in such licence, and

(b) that such licence is identical in substance with the copy sent to them

(2) Where, in any case referred to in sub rule (1)—

(a) the consignee fails to produce the original licence, or

(b) the arms, ammunition or stores claimed by him do not correspond with the description given in such licence or

(c) the licence is not identical in substance with the copy sent to the railway authorities,

such authorities shall not deliver the consignment and shall forthwith inform the nearest Magistrate

13 Production and deliver of import licences—(1) The consignee of arms, ammunition or military stores imported from elsewhere than Berar shall—

(a) if imported by land or river produce the licence

in that behalf, and the District Magistrate of the district into which the consignment is imported

(b) in any case in which the consignment is imported by land or river, deliver the licence to the District Magistrate of the district into which the consignment is imported

or
to which such

(2) Every officer before whom a licence is produced or to whom a licence is delivered under sub rule (1) shall satisfy himself—

(a) that the arms, ammunition or stores correspond with the description given in the licence, and

(b) that any deficiency is properly accounted for.

Export

14. Restriction upon export by sea of cannon and certain rifles—(1) A licence for the export by sea of—

(a) cannon, or

(b) rifles, or parts or fittings for rifles

or fittings for rifles which in the opinion of the authority granting the licence are intended in good faith for sporting purposes

15 Export by sea of arms, ammunition or military stores from and to certain ports—(1) Subject to the provisions of rule 14 a licence for the export by sea of arms ammunition or military stores may be granted in Form IV—

(a) at a Presidency town or Rangoon—by the Commissioner of Police or

(b) at the port of Calcutta Karachi Dhanushkodi Tuticorin Cochin or Aden—by the District Magistrate

(2) Save as otherwise provided in sub rule (3) every licence granted under sub rule (1) shall be for export either—

(a) to such one of the ports specified in clause (a) or clause (b) of sub rule (1) or

(b) in the case of export from the port of Madras—to such one of the ports mentioned in clause (a) of rule 9 or

(c) in the case of export from the port of Rangoon—to such one of the ports mentioned in clause (b) of rule 9 or

(d) in the case of export from the port of Bombay—to such one of the ports mentioned in clause (c) of rule 9 or

(e) to such other place in His Majesty's dominions outside India as may be specified or described in the licence

(3) A licence may be granted at any of the ports mentioned in clause (a) or clause (b) of sub rule (1) for the export by sea of saltpetre or lead to the ports of Akhab or Moulemin

(4) A copy of every licence of the nature referred to in clauses (a) (b) (c) and (d) of sub-rule (2) and in sub rule (3) shall forthwith be sent—

(a) where the arms ammunition or stores are consigned to a Presidency town or Rangoon—to the Commissioner of Police or

(b) where they are consigned to any other place—to the District Magistrate of the district in which such place is situated

16 Export by sea of arms, ammunition or military stores from certain ports to ports in States in India or foreign territory—(1) (a) A licence for the export by sea of arms ammunition or military stores from any of the ports of Madras Bombay Calcutta Rangoon Calcutta Karachi Cochin or Aden to any port in a State in India or other foreign

in respect of which the
stores may be granted in
rule V when the arms
corresponding entry of
entry of the third column
column
of arms ammunition or
political charge of the
an Gulf shall forthwith
the Political Officer

concerned

(3) The authority granting a licence under this rule shall also send a copy of the licence to the agent or master of the vessel carrying the arms ammunition or military stores covered by the licence and the agent or master shall not receive for despatch any case or military stores unless such case or package is accompanied by the original licence and the agent or master shall satisfy himself—

(a) that the arms ammunition or stores correspond with the description in the licence and

(c) the licence is not identical in substance with the copy sent to the agent or master shall not receive the consignment forthwith inform the nearest Magistrate

(3) WHERE any arms, ammunition or stores are exported from a place other than the Political Officer for such Officer.

road or river, a copy of the district out of may, in his discretion, ing them to leave the

district.

(5) (a) Where the arms, ammunition or stores are exported by rail, a copy of the licence shall forthwith be sent by the authority granting it,—

(i) in the case of a consignment despatched from a Presidency town or Rangoon—to the Commissioner of Police, and

(ii) in all other cases—to the District Magistrate of the district from which the

ammunition or military stores unless accompanied by the original licence, and shall satisfy themselves—

(i) that the arms, ammunition or stores correspond with the description given in such licence, and

(ii) that such licence is identical in substance with the copy sent to them.

the original licence, or d therein do not correspond with the

ice with the copy sent to them, it for despatch, and shall forthwith

(d) Where the arms, ammunition or stores are exported by rail to Berar, a copy of the licence shall be attached to the way bill or invoice, as the case may be, and telegraphic advice of every such consignment shall be sent by the railway authorities from the forwarding to the receiving station.

18 **Export to Berar**—A certified copy of a licence to import from British India into Berar, arms, ammunition or military stores, granted under the Berar Arms Rules, 1921, shall be deemed to be a licence for export from British India granted under these rules.

19 **Delivery of export licences**—(1) Where any arms, ammunition or military stores are exported by road or river the licence shall, within 7 days of the arrival of the consignment at the frontier, be delivered to the Political Officer for such district, or to such other officer as the

delivered under sub rule (1) shall satisfy

himself—

(a) that the arms, ammunition or stores correspond with the description given in the licence, and

(b) that any deficiency is properly accounted for.

Import and Re-export

20 **Import and re-export by sea of arms, ammunition and military stores**—Where a vessel bound for a port other than a port in British India calls at any port in British India in the course of its voyage and there remains for a period exceeding forty eight hours any arms, ammunition or military stores in the possession of any

licence in respect of such possession.

be detained until the departure by for such passenger to take out any stores so delivered and detained

Transport

21 **Prohibition of transport by post of arms, ammunition or military stores within the Province of Burma**—The transmission by post within the Province of Burma, of arms, ammunition or military stores is prohibited

22 Prohibition of transport of arms, ammunition or military stores otherwise than under licence—(1) Save as herein otherwise provided, the transport of arms ammunition or military stores is prohibited over the whole of British India, except under a licence and to the extent and in the manner permitted by such licence

(2) Nothing in sub rule (1) shall be deemed to apply—

(a) to arms and ammunition transported personally or as personal luggage in reasonable quantities for his own use by any person lawfully entitled to possess arms or go armed,

or, subject to the provisions of rule 39 and save in the case of arms or ammunition consigned to any place in the province of Ajmer Merwara from outside the province,

(b) to arms ammunition or military stores which are covered by a licence for their export or import and are being transported by a licensed dealer in accordance with such licence—

nation or repair to or from any such premises, or are transported to any other person so licensed or exempted as aforesaid,

(ii) by a licensed dealer, where such articles are transported in a case or package legibly addressed to such a person as is referred to in sub clause (i), in compliance with an order given by such person for the supply of such articles in reasonable quantities for his own use

23 Restriction upon transport of cannon and certain other articles—(1) A licence for the transport of—

(a) cannon,

(b) articles designed for torpedo service,

(c) war rockets, or

(d) machinery for the manufacture of arms or ammunition may be granted in Form I only by the Governor General in Council

(2) A copy of every licence granted in accordance with sub rule (1) shall forthwith be sent—

(a) where the articles are consigned to a Presidency town or Rangoon—to the Commissioner of Police, or

(b) where they are consigned to any other place—to the District Magistrate of the district in which such place is situated

24 Transport of arms, ammunition or military stores—(1) Save as otherwise

provided by rule (2) of section 23 a licence for

VII—

any town or

Magistrate of the

and the local

ency town or

Magistrate of the

Magistrate for

subordinate

Magistrate (if any), having authority at the place to which arms ammunition or stores

by rail, a copy of the

by be, and telegraphic

authorities from the for

be taken from the rail

way police, the railway

stores correspond with

any arms, ammunition or military stores transported by land or river under a licence shall deliver the licence

at the place

of destination is situated or to such other Magistrate as the District Magistrate may appoint in that behalf.

(2) Any officer to whom a licence is delivered under sub rule (1) shall satisfy himself—

(a) that the arms, ammunition or military stores correspond with the description

under clause (b) of that

Import, Transport and Re-export

26 Licence for import, transport and re-export of arms, ammunition and military stores—(1) Save as otherwise provided by rules 5, 7 and 23 a comprehensive licence for the import by sea, land or river of arms, ammunition or military stores and for their re-export may be granted in Form VIII—

(a) where the arms, ammunition or stores are consigned from one Indian State to another separated therefrom by British Indian territory—by the Political Officer for either State

(b) where they are consigned from any place in one Indian State to any other place in the same State separated therefrom by British Indian territory—by the Political Officer of such State

Provided that nothing in this sub rule shall apply to import from or export to Berar

(2) (a) Where under the authority of the licence—
ammunition or stores are to be transported across by rail a copy of the licence shall forthwith granting it to the other Political Officer concerned places from which the consignment is to be despatched

(b) The railway authorities shall not receive for despatch any case or package containing arms, ammunition or military stores unless accompanied by the original licence and shall satisfy themselves—

(i) that the arms, ammunition or stores correspond with the description given in such licence and

(ii) that such licence is identical with the copy sent to them

(c) " " "

(i)

(ii)

the

under the Political Officer granting the licence

(3) Where under the authority of a licence granted under sub rule (1) arms, ammunition or stores are to be transported across British Indian territory and re-exported by road or river—

(i) a copy of the licence shall be forwarded to the District Magistrate at the frontier of British India

(ii) the licence shall be produced out of which it is to be re-exported, and before it so

(a) that the arms, ammunition or stores correspond with the description given in the licence and

(c) that any deficiency is properly accounted for

Export and Re-import

27 Licence for export and re-import of arms, ammunition and military stores—(1) Save as otherwise provided by rules 5 and 7 a comprehensive licence for the export by

port where

lian to any

be granted

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, ammuni

tion or military stores when consigned from, or, as the case may be, for their import, when consigned to, such place

Provided that nothing in this sub rule shall apply to export to, or import, from Berar.

(2) A copy of every licence granted under sub rule (1) shall forthwith be sent by the licensing authority granting it to the other licensing authority concerned and also—

(a) where the arms, ammunition or stores are to be transported entirely by rail to the frontier of the country to which they are to be despatched, and where the arms, ammunition or stores are to be transported by road or river to the frontier of the country to which they are to be despatched, and where it is to cross the frontier of the country to which they are to be despatched.

ing arms, ammunition or military stores unless accompanied by the original licence and shall satisfy themselves.—

(a) that the arms, ammunition or stores correspond with the description given in such licence, and

(b) that such licence is identical with the copy sent to them

(4) Where in any case—

(a) the consignment is not accompanied by the original licence, or

(b) the arms, ammunition or stores contained therein do not correspond with the description given in such licence, or

(c) the licence is not identical with the copy sent to them, the railway authorities shall not receive the consignment for despatch and shall forthwith inform the nearest Magistrate having jurisdiction at the place where the consignment is tendered for despatch

Manufacture and Sale.

28 Manufacture, conversion, sale and keeping for sale of arms, ammunition or Military stores —(1) A licence—

stores

(2) A licence—

on or military stores

y by the Board of

Revenue,
(11)
(3)
And, the
authorise
rifles of
\$55 or any intermediate bore.

Provided that the licensee shall not sell from his stock to any person who does not hold—

(a) a licence to possess such ammunition, or

(b) a licence for the export of balled ammunition to a State in India granted by a Political Officer empowered, under sub rule (1) of rule 16 or sub rule (1) of rule 17, to grant licences for export to such State

(4) Every Magistrate and every Police officer not below the rank of Inspector, or, if the Local Government so directs, of Sub Inspector, may, within the local limits of his authority,—

(a) enter and inspect any premises in which arms, ammunition or military stores are manufactured, converted, sold, or lent for sale, and

(b) examine the stock and accounts of receipts and sale of arms, ammunition or military stores.

Keeping for Safe Custody.

29 Licence to keep for safe custody fire arms and ammunition—A licence to keep for safe custody fire arms and ammunition deposited by their owners for that purpose may be granted in Form XIII to the holder of a licence in Form IX, Form X, Form XI or Form XII—

(a) in a Presidency town or Rangoon—by the Commissioner of Police, or

(b) in any other place by the District Magistrate or by any Sub divisional Magistrate specially empowered by the Local Government in that behalf

Possession

30 Restriction upon possession of cannon and certain other articles—(1) A licence for the possession of—

- (a) cannon
- (b) articles designed for torpedo service
- (c) war rockets or
- (d) machinery for the manufacture of arms or ammunition,
- (e) continuous fire arms

may be granted in Form I only by the Governor General in Council

(2) A copy of every licence granted under sub rule (1) shall forthwith be sent—

(a) where the articles are to be kept in a Presidency town or Rangoon—to the Commissioner of Police or

(b) where they are to be kept in any other place—to the District Magistrate of the district in which such place is situated

31 Possession of arms ammunition or military stores—Save as otherwise provided by rule 30 a licence for the possession only of arms (other than pistols or revolvers) ammunition or military stores may be granted in Form IV—

(a) in a Presidency town or Rangoon—by the Commissioner of Police or

(b) in any other place—by the District Magistrate or by any Sub divisional Magistrate specially empowered by the Local Government in that behalf

32 Licence for the possession and use of fire arms for purposes of target practice—by the manner

ate

Possession and Going Armed

33 Possession of arms and

for sport protection or
the possession of arms
for the purposes of sport

in Calcutta—by the
and in Rangoon—by the Assistant

strate

such shall

or for

Provided that—

(1) no licence shall be granted for the possession of

rifles of 303 or
455 or any inter
that such rifle or
pistol or revolver has been lawfully imported into British India as the case may be and
the amount of ball and ammunition which such licensee may possess during the period of
twelve months next ensuing shall be entered in the licence

(2) Any licence granted under sub rule (1) may be made valid by the licensing authority as follows—

(a) throughout the province in which it is granted or any specified part thereof, or throughout British India and

(b) when granted by a Political Officer under clause (c) of that sub rule throughout the whole or any specified part of British India

(3) Any such licence having effect outside the province in which it is granted shall be

granted subject to any restrictions which may be imposed by any general or special order of a Local Government in regard to its own province

(4) The District Magistrate shall be deemed for such period to be a licence granted under sub rule (1)

34 (1) Temporary licence for possession of arms and for going armed by

Police and

(b) in any other cases—by the District Magistrate or by any other officer specially empowered by the Local Government in that behalf

Provided that—

(a) no licence shall be granted for the possession of such rifles pistols or revolvers as are specified in clause (a) of sub rule (1) of rule 7 or of ammunition for rifles of 303 or 450 bore or for pistols or revolvers of 441 455 or any intermediate bore or for

Commissioner of Police

(b) where his place of destination is elsewhere in British India or Berar—to the District Magistrate of the district in which such place is situated

(c) where his place of destination is in an India State—to the Political Officer for such State

(3) Any officer to whom a copy of such licence has been sent under sub rule (2) shall satisfy himself when necessary that the licensee has complied with condition 6 entered on the form of licence

35 Possession of arms and ammunition, and going armed for the destruction of and for going armed beings or cattle may be

divisional Magistrate

for the protection of
going armed for the
y be granted in Form
te specially empowered

licence by the licensing

officer

37 Going armed on a journey—(1) A licence for going armed on a journey in or

such State

nal Magistrate receives
from any person who—

a licence
or other
d shall in
licence to

Provided that an application on behalf of a person subject to the provisions of the Indian Army Act 1911 (VIII of 1911) shall be made to the authority so empowered in respect of the place where such person permanently resides. Where however such person has his permanent home outside British India the application should be made through his Commanding Officer to the licensing officer of the district in which he is for the time being serving.

(2) Without prejudice to the generality of sub-rule (1) every person applying for a licence—

- (a) for the import by land or river
- (b) for the export or
- (c) for the transport

of any arms, ammunition or military stores shall specify in his application—

- (i) the place of destination
- (ii) the route

11

42 Duration and renewal of licences—(1) Save as herein otherwise provided, every licence under these rules shall unless previously cancelled be in force for such

case may be the licence shall cease to be in force

(2) A licence for the transport of arms, ammunition or military stores shall not

who granted it or by any other authority empowered to grant a licence of the description in question

Provided as follows—

(a) Licences in Form XI or Form XII may, where the Local Government so directs, be renewed by the Commissioner of the Division in which the licensee resides or carries on business

be remitted in the
 discretion of the
 Commissioner of Police

(8) No fee shall be chargeable in respect of the grant or renewal of any licence in Form XVI to any member of any of Schedule VII for possession of specified in the corresponding entry application for renewal is not made expires, the licensing authority may, in his discretion, levy renewal fees at the rate specified in Form XVI

(9) No fee shall be chargeable in respect of the endorsement under sub rule (4) of rule 33 of a licence granted in Pondicherry.

47 Fees payable for duplicates.—Where a licence granted or renewed under these rules is lost or accidentally destroyed, the authority empowered to grant such licence may grant a duplicate—

(a) where the original licence was granted without the payment of any fee free, of all fee, or

(b) in any other case, on payment of a fee of one rupee or of the fee with which the original licence was chargeable, whichever is less

48 Collection of fees.—All fees payable under rule 46 or rule 47 shall be paid by means of non judicial stamps or in cash at the option of the applicant

Cancellation and Savings.

49 Cancellation of the Indian Arms Rules, 1920.—The Indian Arms Rules, 1920, are hereby cancelled

Provided that all exemptions, exclusions and withdrawals made, all licences or duplicates granted or renewed, all fees imposed, levied, remitted or reduced, and all powers conferred, by or under those rules shall, so far as they are consistent with these rules, be deemed to have been, respectively, made, granted, renewed, imposed, levied, remitted, reduced or conferred hereunder

SCHEDULE I

(See Rule 3)

PERSONS EXEMPTED

The persons or classes of persons specified or described in the first column of the subjoined table are, subject to the provisions of provisos (b) and (c) to rule 3 exempted, in respect of the arms and ammunition described in the second column, when carried or possessed (save where otherwise expressly stated) for their own personal use, from such prohibitions and directions contained in the Act as are indicated in the fourth column, subject to the provisos and restrictions entered in the third column

THE TABLE

Persons or classes of persons	Arms and ammunition.	Provisos and restrictions	Prohibitions and directions.
(1) (a) The Viceroy and Governor General of India, the Commander in Chief in India, the Governors of Madras Bombay, Bengal the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the Central Provinces, and Assam, the Chief Commissioner of Delhi	All except— (a) cannon (b) articles designed for torpedo service; (c) war rockets, (d) such rifles, muskets, pistols or revolvers as are specified in clause (a) of sub-rule (1) of rule 7	.	Those contained in sections 13 to 15

Persons or classes of persons	Arms and ammunition	Provisos and restrictions	Prohibitions and directions
<p>the Commissioner in Sind Privy Councillors, members of the Council of India when visiting India during their term of office members of the Executive Councils of the Governor General and Governors Ministers in Governors Provinces and members of the Indian Legislature during their tenure of office and for six months thereafter residents of the First Class Chief Justices and Puisne Judges of High Courts Judges of Chief Courts Judicial and Additional Judicial Commissioners members of Boards of Revenue members of Tribunals appointed under sub section (2) of section 296 of the Government of India Act 1935 Financial Commissioners</p>	<p>(and ammunition which can be fired from a rifle of 303 or 450 bore, or from a musket of 410 bore or from a pistol or revolver of 441 455 or any intermediate bore) not lawfully imported into British India</p> <p>(e) machinery for the manufacture of arms or ammunition and</p> <p>(f) appliances the object of which is the silencing of fire arms</p> <p>(g) appliances (including pistol pen pistol pencils hand grenades cartridges etc) for discharging gas</p>		<p>Those contained in sections 13 to 15</p>
<p>(b) Every Ruling Prince or Chief having a salute of guns and every legitimate son of such Ruling Prince or Chief who is not less than 16 years of age and has been nominated by such Ruling Prince or Chief</p>	Ditto		Ditto
<p>(c) The retainers of any Prince or Chief having a salute of guns when such Prince or Chief is entering passing through or residing in British India</p>	Ditto		Ditto
<p>(d) Servants of a Ruling Prince or Chief having a salute of guns when carrying arms for but not accompanying their masters</p>	Ditto	<p>This exemption shall be subject to the following conditions —</p> <p>(i) the number of servants entitled to the exemption in the case of each such Prince or Chief shall not exceed 4 and</p> <p>(ii) their names shall be specified in a general authorisation to be issued by the Political Officer concerned to the Prince or Chief</p>	
<p>(a) Every Ruling Chief having a salute of guns members of the</p>	Ditto	<p>This exemption shall be subject to such conditions (if</p>	Ditto

Persons or classes of persons	Arms and ammunition	Provisos and restrictions	Prohibitions and directions
<p>families of Ruling Princes or Chiefs and such nobles, officials or accredited agents of a State in India as may be designated by the Local Government or Political Officer concerned</p>		<p>any) as may be prescribed by the Local Government or the Political Officer as the case may be, and may, where necessary be of a general nature dispensing with the necessity of a fresh order of each occasion</p>	
<p>(c) the retinues of any Ruling Chief or other person referred to in sub-heads (a) and (b) when such Ruling Chief or person is entering passing through or residing in British India subject to such limitation of numbers as may be fixed by the Political Officer concerned under the special or general orders of—</p> <p>(i) the Governor General in Council or</p> <p>(ii) in respect of Ruling Chiefs not having a salute of guns whose political relations are with a Local Government the Local Government concerned, and</p> <p>(d) all officials of States in India passing through British India on duty</p>			
<p>(3) Every Maharaja Rajah or Nawab whose title has been conferred or recognized by Government every Peer Baronet Knight Bachelor and knight of any Order established by the Crown and the khans of Teri and Phulera in the North West Frontier Province</p>	Ditto	<p>The arms or ammunition carried or possessed by any person herein exempted shall be of such descriptions only and shall not exceed such quantities if any as—</p> <p>(a) the Governor General in Council or</p> <p>(b) a Local Government in respect of the territories administered by it or subject to its control</p> <p>may declare to be reasonable for such person to carry or possess</p>	Those contained in sections 13 to 15
<p>(4) Every Consul and Consular Agent</p>	Ditto	Ditto	Ditto

Persons or classes of persons	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions
(5) Every person of Coorg race and every Jumma tenure holder in Coorg, who, by his tenure is liable to perform military or police duties	Ditto.	The arms or ammunition carried or possessed by any person herein exempted whilst residing or travelling outside the Province of Coorg shall not exceed one rifle with 100 rounds of ammunition for the same and one smooth bore, breech or muzzle loading gun with 500 cartridges or the equivalent in leaden shot and gun powder	Those contained in sections 13 to 15.
(6) The following persons and their retainers, namely — (a) the ancient Zamindars and Poligars of the Madras Presidency, every Mahikans holder in the Malabar District, the Prince of Arcot, Raja Sir Annamalai Chettiar of Chetnad and his successors from time to time in the title of Raja M R R A L A R R M Vellayan Chettiyar Avargal, Zamindar of Davakottai in the Ramnad district the Mahant of Tirupati in the North Arcot district and Shaik Mushtak Shaha the present Valiya Thangal of Kundotti in the Ernad Taluk, Malabar district of the Madras Presidency (b) the first class Sardars of the Deccan and Southern Maratha Country States, the first class Sardars of Gujarat and such members of the Talpur family, such Jaigirdars and Zamindars in Sind and such of the Mewasi Chieftains in the West Khandesh District of the Bombay Presidency as the Government of Bombay may designate. (c) such Zamindars of Bengal Bihar and Orissa, and Assam as the Local Government may designate in this behalf. (d) such Sardars and Jaigirdars of the Punjab and North West Frontier Pro	Ditto	The exemptions shall be subject to— (a) the orders of the Local Government regarding the persons to be included in this category, the number of retainers and the quantity and description of arms and ammunition to be permitted in each case, the purposes for which such arms may be carried, and (b) the annual registration of the retainers' weapons exempted the number and description only being specified	Ditto.

Persons or classes of persons	Arms and ammunition	Provisos and restrictions	Prohibitions and directions
<p>since as the Local Government may designate in this behalf</p> <p>(e) Shan Sawbwas and other Chiefs in Burma</p> <p>(f) (i) the Zamindars of the Scheduled Districts of the Central Provinces</p> <p>(ii) the Dewan of Seoni</p> <p>(iii) the Bhonslate of Timarni and Burhanpur</p> <p>(iv) the senior representative of the family of the Rao of Saugor</p> <p>(v) the head of the junior branch of the Bhonsla family known as the Kuar Sahib</p> <p>(vi) the representative of the family of the former Rajas of Saugor</p> <p>(g) the Taluqdars of Oudh Rao Krishna Pal Singh Ju Deo of Gopalpura Jalaun Raja Bahadur Bijai Bahadur Singh of Katehra and such other Zamindars of the United Provinces as the Local Government may designate in this behalf and</p> <p>(h) (i) the Tazimi Istimrardars and non Tazimi Istimrardars of Ajmer Merwara and all ex soldiers who on the 6th November 1935 were settled in Ajmer Merwara</p> <p>(ii) the Nawab of Bori</p> <p>(iii) the Diwan of Durgah Khwaja Sahib</p> <p>(iv) the Jagirdar of Gangwana</p> <p>(v) the Jagirdar of Dodiwana</p> <p>(vi) the Jagirdar of Jharwara</p> <p>(7) Every officer holding a Commission from His Majesty every officer of His Majesty's Naval Military or Air Forces or of Indian States Forces or of the Indian Territorial Force every person enrolled under the Auxiliary Force Act 1920 (XLIX of 1920) and every warrant officer or every chief petty officer (British) or Staff Sergeant</p>	<p>Single barrel rifles of 303 bore required for match shooting purposes</p>	<p>1 Only one such rifle at a time shall be imported or used by any person hereby exempted</p> <p>2 The rifle shall be sighted to a range of over 1 000 yards</p> <p>3 The rifle shall in the case of the regimental officers,</p>	<p>All</p>

Persons or classes of persons	Arms and ammunition	Provisos and restrictions	Prohibitions and directions
<p>or Flight Sergeant of His Majesty's Naval Military or Air Forces including a warrant officer or Staff Sergeant who is an instructor of the Auxiliary Force India or of Indian Territorial Force</p>		<p>warrant officers non commissioned officers and persons appointed to Corps of the Auxiliary Force India or of the Indian Territorial Force become part of the equipment of the Corps to which the owner for the time being belongs</p> <p>4 The owner shall at the time of importation produce a certificate from the Commanding Officer of the Corps senior officer or Head of Department to which he belongs to the effect that in the case of regimental officers warrant officers non commissioned officers and persons appointed to Corps of the Auxiliary Force India or of the Indian Territorial Force the weapon will be brought on to the equipment ledger of the Corps and in the case of Staff and Departmental officers will be brought on to the equipment ledger of a Corps in the officer's command or office inventory of stores and will be accounted for in the same manner as other equipment</p> <p>5 This exemption shall in the case of persons appointed to a Corps of the Auxiliary Force India or of the Indian Territorial Force</p>	

Persons or classes of persons	Arms and ammunition	Provisos and restrictions	Prohibitions and directions
		<p>cease to have effect on removal of the owner from the force</p> <p>6 Any person hereby exempted may dispose of his rifle to another person so exempted Provided that the rifle becomes part of the equipment of the Corps to which the latter belongs and is accounted for as such</p>	
<p>(8) The Officer Commanding a Unit in His Majesty's Regular Forces or in any Indian State Forces and when he is in possession of a pass granted and signed by his Officer Commanding every warrant officer non-commissioned officer and soldier in His Majesty's Regular Forces or in any Indian State Forces</p>	<p>Such arms and ammunition as are provided for sporting purposes by Government or from a regimental fund under the authority of the Officer Commanding the unit</p>	<p>This exemption shall apply in the case of warrant officers non-commissioned officers and soldiers only in respect of weapons and ammunition entered in the pass and to the areas and for the dates specified in the pass and in the case of Officers Commanding only in respect of the purchase and stocking of arms and ammunition which are provided for sporting purposes by Government or from a regimental fund</p>	<p>Those contained in sections 13 to 15</p>
<p>(9) Persons holding swords or other arms received by them as gifts from the Governor General in Council or a Local Government or the Commander in Chief</p>	<p>Such swords or other arms as have been so received together with ammunition for any fire arms so received</p>	<p>The ammunition in respect of which any person is here in exempted shall be of such description only and shall not exceed such quantities as—</p> <p>(a) the Governor General in Council or</p> <p>(b) a Local Government in respect of the territories administered by it or subject to its control may direct</p>	<p>All</p>

SCHEDULE II

(See Rule 3)

ARMS AMMUNITION AND MILITARY STORES EXCLUDED

Within the areas specified in the first column of the sub joined table the arms, ammunition and military stores described in the second column are excluded from the operation of such prohibitions and directions contained in the Act as are indicated in the third column.

THE TABLE

Area	Arms ammunition or military stores	Prohibitions and directions
1 British India except the Punjab Burma and the Delhi Province	<p>All arms except—</p> <p>(a) cannon other than of the kind specified in head (i) of entry 2</p> <p>(b) fire arms</p> <p>(c) air guns and air pistols other than of the kind specified in head (iii) of entry 2</p> <p>(d) articles designed for torpedo service</p> <p>(e) war rocket-</p> <p>(f) machinery for the manufacture of arms and</p> <p>(g) appliances the object of which is the silencing of fire-arms.</p> <p>Provided that the exceptions in respect of cannon and fire arms shall not apply in the case of arms of these classes which are obsolete and unserviceable and of purely antiquarian value or which are in the possession of a regiment or military mess as trophies or curiosities or otherwise solely for purposes of ornament of display</p>	<p>All provided that the Local Government may, by notification in the local official Gazette, retain all or any of the prohibitions and directions contained in the Act in respect of any areas in the case of any class of persons or of any specified area</p> <p>Ditto</p>
2 British India	<p>(i) Toy cannon weighing less than 56 lbs and having—</p> <p>(a) a calibre of less than one inch</p> <p>(b) a length of bore of less than 24 inches and</p> <p>(c) the interior of the bore unrifled</p> <p>(ii) Sights for rifles imported for the use of or for sale to, the persons enumerated in entry 8 of Schedule I or non-commissioned officers and soldiers of His Majesty's regular forces on a written permit from the officer commanding the regiment to which they belong</p> <p>(iii) Air guns or air pistols which satisfy the following test, namely, that projectiles discharged from such guns or pistols do not perforate a target 12 inches square formed by five strawboards of foolscap size each board being 3/4ths of an inch thick and closely held together in a frame.</p> <p>Provided that in making and estimating the test the following</p>	<p>All</p> <p>All</p> <p>All provided that the Local Government may, by notification in the local official Gazette retain all or any of the prohibitions and directions contained in the Act in respect of air pistols or of any class thereof in the case of any</p>

Area	Arms, ammunition or military stores	Prohibitions and directions
2 British India— <i>concd</i>	conditions shall be observed, namely —	class of persons or of any specified area.
	(1) The gun or pistol shall be held horizontally with the muzzle at a distance of five feet from the target,	
	(2) the test shall be repeated twenty times for each class of projectile which can be discharged from the gun or pi-tol, and	
	(3) perforation shall be deemed to be effected in a case where the projectile is a dart, if the point of the dart pierces the back of the target, and in any other case if the projectile passes completely through the back of the target	
	(iv) Explosives made in small quantities for the purpose of chemical experiment and not for practical use or for sale,	
	and	
	the following classes of explosives when intended <i>bona fide</i> for private blasting purposes —	
	(1) gunpowder in any quantity not exceeding 30 pounds,	
	(2) cartridges made with gunpowder and not containing their own means of ignition, and containing in all not more than 30 pounds of gunpowder	
	(3) percussion caps,	
3. Punjab, Burma and the Delhi Province	(4) safety fuses	Those contained in section 14
	(i) Gun wads and wire cartridges	
	(ii) All arms, ammunition and military stores covered by any licence or exemption granted in Berar under the law for the time being in force relating to arms, ammunition and military stores provided that the conditions of such licence or exemption are observed	Those contained in section 6
	(iii) Arms and ammunition required for, and not kept or used for any	
		All
		All
		All
	(i) Bows and arrows	All
	(ii) Uniform swords and dirks manufactured in Europe of recognised military or official patterns, when possessed by, or intended to be supplied to, persons entitled to wear them as part of their uniforms	All
	(iii) Swords imported for presentation as prizes for members of the regular or Auxiliary Forces	All

Area	Arms, ammunition or military stores	Prohibitions and directions
3 Punjab, Burma and the Delhi Province— <i>concid</i>	<p>(ii) In Burma and the Punjab ornamental arms, and arms of an obsolete pattern possessing only antiquarian value, masonic swords, and theatrical and fancy dress swords provided that they are <i>virtually useless for offensive and defensive purposes</i></p> <p>(v) Arms which are in the possession of a regiment or military mess as trophies or curiosities or otherwise solely for purposes of ornament or display</p> <p>(vi) Kirpans possessed or carried by Sikhs provided that in Burma the length of the blade thereof does not exceed nine inches</p> <p>(vii) Swords of honour possessed or carried by persons or by the heirs of persons to whom they were awarded by the Governor General in Council or a Local Government</p> <p>(viii) Kukris possessed or carried by pensioned Gurkha officers, warrent officers, non commissioned officers or soldiers of His Majesty's Regular Forces, residing in British India</p>	<p>All</p> <p>All</p> <p>All</p> <p>All</p> <p>All</p>
3A Punjab—	Swords other than swordsticks	Those contained in sections 13 and 15
(a) The districts of Mianwali, Dera Ghazi Khan, Muzaffargarh, Jhang Gurgaon Hissar, Ambala, Simla Kangra Rohtak Julundar, Gurdaspur Sialkot, Jhelum, Ludhiana, Gujranwala, Gujrat, Attock Shahpur, Hoshiarpur, Sheikhupura, Montgomery and Lyallpur.	The term swordstick includes any straight sword or dagger fitted in a sheath of such a type that it can conveniently be used as a walking stick irrespective of whether or not the form of the sheath completely disguises the presence of the blade within	
(b) The remainder of the Punjab	Swords, other than swordsticks possessed or carried by the following classes of persons — (a) Jagirdars enjoying a <i>pagr</i> of Rs 50 or more <i>per annum</i> , (b) persons paying Rs 50 or more <i>per annum</i> as land revenue, (c) income tax payers, (d) title holders, and (e) retired military officers of and above the rank of Jemadar.	Ditto
4 British India, excepting Burma, Aden, Mianwali and Muzaffargarh districts in the Punjab and all districts on the external land frontier of British India.	(i) Lead required in good faith for industrial and manufacturing purposes (other than the manufacture of bullets and bird shot)	<p>All</p> <p>All</p>
	may fix.	

Area	Arms ammunition or military stores	Prohibitions and directions
5 British India excluding Burma Aden and all the districts on the external land frontier of British India except the Karachi Larkana and Upper Sind Frontier districts in the Bombay Presidency	(i) Saltpetre (ii) Sulphur in quantities not exceeding such limits as the Local Government may fix	All All
6 Aden Mianwali and Muzaffargarh districts in the Punjab and all districts on the external land frontier of British India outside Burma	(i) Lead required in good faith for industrial and manufacturing purposes (other than the manufacture of bullets and bird shot) in quantities not exceeding such limits as the Local Government may fix (ii) Leaden bullets and bird shot in quantities not exceeding such limits as the Local Government may fix	All All
6A Aden Mianwali and Muzaffargarh districts in the Punjab and all districts on the external land frontier of British India, outside Burma except Karachi Larkana and Upper Sind Frontier districts in the Bombay Presidency	Sulphur in quantities not exceeding 10 seers	All
7 Burma and all districts on the external land frontier of British India except the Karachi Larkana and Upper Sind Frontier districts in the Bombay Presidency	Saltpetre required for medicinal or goldsmith's purposes in quantities not exceeding 10 lbs	All
8 That part of the Bhavnagar railway which lies in the Ahmedabad district in the Bombay Presidency	All arms, ammunition and military stores covered by any exemption or <i>jarana</i> granted under the Kathiwar State Arms Rules or the Kathiwar Agency Arms Rules provided that the conditions of such exemption or <i>parwana</i> are observed	Those contain in sections 13 to 15
9 Burma—	(i) Lead except lead in the form of bullets and bird shot (ii) Lead required in good faith for industrial or manufacturing purposes (other than the manufacture of bullets and bird shot) in quantities not exceeding such limits as	Those contained in section 6 All
(a) Generally	may fix when possessed by persons entitled to possess fire arms (ii) Sulphur in quantities not exceeding one seer	All All

Area	Arms, ammunition or military stores	Prohibitions and directions
	(a) Knives with pointed blades rigidly affixed or capable of being rigidly affixed to the handle and measuring in all over five inches in length which are intended exclusively for domestic agricultural or industrial purposes	That contained in section 13 as amended by Burma Act VII of 1928 Provided that the purpose for which such knife is carried is a domestic, agricultural or industrial purpose
(b) In the Arakan Hill Tracts	Spears	All

SCHEDULE III

(See Rule 3)

ARMS, AMMUNITION AND MILITARY STORES EXCLUDED

The arms, ammunition and military stores described in the first column of the subjoined table are excluded from the operation of the prohibitions and directions contained in section 6 of the Act to the extent entered in the second column

THE TABLE

Arms, ammunition and military stores	Prohibitions and directions
I Any arms, ammunition or military stores brought into and landed in bond at or brought into any port in British India and declared under manifest to be consignments for, any port (other than a port specified in entry II of this Schedule) to which export is permitted	All
II Any arms, ammunition or military stores brought into any port in British India and declared under manifest to be consignments for any port within the political charge of the Political Resident at Aden or the Political Resident in the Persian Gulf to which export is permitted	Those relating to unport
III Any arms, ammunition or military stores brought into the port of Aden and consigned, whether with or without transshipment from any other British port to any other port, other than a port on the eastern seaboard of Africa to which the shipment of arms is for the time being forbidden by an order of the Political Resident at Aden	All

SCHEDULE IV

(See Rule 3)

PARTS OF BRITISH INDIA WITHDRAWN

The areas specified in the first column of the subjoined table are withdrawn in respect of the arms and ammunition described in the second column, from such prohibitions and directions contained in the Act as are indicated in the third column

THE TABLE

Areas	Arms and ammunition	Prohibitions and directions
(1) All Scheduled Districts in the Madras Presidency	All except cannon and revolving arms	All except those contained in sections 12 and 20
(2) The Chittagong Hill Tracts in Bengal	All	Those contained in sections 13 and 14
(3) (a) Ajmer Merwara except the Ajmer City Municipality and all places situate within three miles of any part thereof	All except cannon revolvers, pistols and rifle	Ditto
(b) Those parts of the Mirzapur district in the United Provinces of Agra and Oudh which are situated on the right bank of the river Son	Ditto	Ditto
(4) The lands which are for the time being occupied by the Rajputana Malwa Railway in the Nimar District of the Central Provinces (including the lands occupied as stations outbuildings and for other railway purposes) between the stations of Mortakka and Nimar Kheri	All	Those contained in sections 14 and 15 Provided that a person who refuses or omits to comply with any regulation or rule of the Railway for the time being in force relating to the custody of arms while in passenger trains shall not be entitled to the benefit of this exemption
(5) The lands to which the Indus Valley State Railway Lands Act 1873 extends	All	Ditto
(6) The following parts of the Punjab namely— (a) The pargana of Lahaul (b) the Dera Ghazi Khan district and (c) the Isakhel tahsil of the Mianwali district	All (not being possessed by members of trans border tribes) except rifles pistols revolvers and daggers and rifle pistol and revolver ammunition	Those contained in sections 13 14 and 15

SCHEDULE V

(See *File 10*)

OFFICERS EMPLOYED TO GRANT LICENCES FOR EXPORT BY SEA TO PORTS IN STATES IN INDIA OR TO FOREIGN TERRITORY

Officers	Ports from which they may grant licences to export	Ports to which they may grant licences to export	Conditions
(1) Board of Revenue in Madras	Any port in British India	Ports in foreign settlements within the political jurisdiction of the Government of Madras	
(2) The Secretary to the Government of Bombay in the Political Department	Do	(i) Ports in Indian States in Bombay or foreign settlements within the political jurisdiction of the Government of Bombay	

Officers	Ports from which they may grant licences to export	Ports to which they may grant licences to export	Conditions
		<p>(ii) ports within the territories of His Highness the Gaekwar of Baroda,</p> <p>(iii) ports within the political jurisdiction of the Political Resident in the Persian Gulf</p> <p>(ii) any ports on the coast of Africa and</p> <p>(i) ports within the political jurisdiction of the High Commissioner Iraq</p>	<p>For sporting rifles (other than sporting rifletaking ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee and for explosives required for commercial purposes</p>
(3) The Chief Secretary to the Government of Bengal	Calcutta	<p>(i) Ports within the political jurisdiction of the Political Resident in the Persian Gulf and</p> <p>(ii) ports within the political jurisdiction of the High Commissioner Iraq</p>	<p>For sporting rifles (other than sporting rifletaking ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee</p>
(4) The Commissioner in Sind	Karachi	<p>(i) Ports within the territory of His Highness the Maharao of Kutch</p> <p>(ii) ports within the political jurisdiction of the Political Resident in the Persian Gulf, and</p> <p>(iii) ports within the political jurisdiction</p>	<p>For sporting rifles (other than sporting</p>

Officers	Ports from which they may grant licences to export	Ports to which they may grant licences to export	Conditions.
(5) The Political Resident at Aden	Aden	(i) Any port on the coast of Africa or Arabia (other than a port on the latter coast which is within the political jurisdiction of the High Commissioner, Iraq), and	rifles taking ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee
		(ii) any port on the coast of Arabia which is within the political jurisdiction of the High Commissioner, Iraq	Ditto
(6) The Agent to the Governor General in the States of Western India	Bombay and Karachi	Any port in any State in Kathiawar or in the Kutch State	
(7) The Agent to the Governor General and Chief Commissioner in Baluchistan and the Political Officer, Kalat	Any port in British India	Any port on the Makran coast which is within their respective political jurisdiction	
(8) The Agent to the Governor General Madras States	Ditto.	Any port in Madras States	
(9) The Agent to the Governor General for the Deccan States and Resident at Kolhapur	Ditto	Any port in the Deccan States	

Officers	Ports from which they may grant licences to export	Ports to which they may grant licences to export	Conditions
		<ul style="list-style-type: none"> (i) ports within the territories of His Highness the Gaekwar of Baroda, (ii) ports within the political jurisdiction of the Political Resident in the Persian Gulf (iii) any ports on the coast of Africa and (iv) ports within the political jurisdiction of the High Commissioner Iraq 	<p>For sporting rifles (other than sporting rifleshooting ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee and for explosives required for commercial purposes</p>
(3) The Chief Secretary to the Government of Bengal	Calcutta	<ul style="list-style-type: none"> (i) Ports within the political jurisdiction of the Political Resident in the Persian Gulf and (ii) ports within the political jurisdiction of the High Commissioner Iraq 	<p>For sporting rifles (other than sporting rifleshooting ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee</p>
(4) The Commissioner in Sind	Karachi	<ul style="list-style-type: none"> (i) Ports within the territory of His Highness the Maharao of Kutch (ii) ports within the political jurisdiction of the Political Resident in the Persian Gulf and (iii) ports within the political jurisdiction 	<p>For sporting rifles (other than sporting</p>

Officers	Ports from which they may grant licences to export	Ports to which they may grant licences to export	Conditions
		tion of the High Commissioner Iraq	rifles taking ammunition of 303 or 450 bore) sporting shot guns and sporting ammunition (other than ammunition which can be used in rifles of 303 or 450 bore) not intended for sale or for military purposes but for the personal use of the consignee
(5) The Political Resident at Aden	Aden	(i) Any port on the coast of Africa or Arabia (other than a port on the latter coast which is within the political jurisdiction of the High Commissioner Iraq) and (ii) any port on the coast of Arabia which is within the political jurisdiction of the High Commissioner Iraq	Ditto
(6) The Agent to the Governor General in the States of Western India	Bombay and Karachi	Any port in any State in Kathiawar or in the Kutch State	
(7) The Agent to the Governor General and Chief Commissioner in Baluchistan and the Political Officer, Kalat	Any port in British India	Any port on the Makran coast which is within their respective political jurisdiction	
(8) The Agent to the Governor General Madras States	Ditto	Any port in Madras States	
(9) The Agent to the Governor General for the Deccan States and Resident at Kolahpur	Ditto	Any port in the Deccan States	

SCHEDULE VI

[See Rule 17 (1)]

OFFICERS EMPLOYED TO GRANT LICENCES FOR EXPORT BY LAND OR RIVER TO
ANY PLACE BEYOND THE FRONTIER OF BRITISH INDIA

Officers 1	Place 2	Conditions 3
(1) A Secretary to the Government of— (a) Bombay or Bengal (b) The Board of Revenue in Madras	Any State in India	For the export of ammunition intended solely for the use of a public railway or other public work
(2) The Commissioner of Police in Madras	Any of the French Settlements in the Madras residency	To persons who would be exempted in British India from the ordinary prohibitions of the Act and subject to the following conditions so far as those conditions apply to the circumstances of the case namely — (a) the consignment for export shall consist only of arms and ammunition in reasonable quantities and for personal use (b) the consignee shall be one of the persons or shall belong to one of the classes of persons mentioned in Schedule I, and (c) the Commissioner shall keep a list of such licences
(3) (i) The Commissioner of Police in the towns of— (a) Madras (b) Bombay (c) Calcutta and (d) Rangoon (ii) The District Magistrate in other places	Any place in Berar	For the export of arms ammunition or military stores except— (i) cannon, (ii) articles designed for torpedo service (iii) war rockets or (iv) machinery for the manufacture of arms or ammunition Subject to the condition that a copy of to act in
(4) (i) The Commissioner of Police in the towns of—	Any State in India	(a) The consignment for export shall consist only of arms and ammunition in reasonable quantities and for personal use

Officers	Place	Conditions
1	2	3
(a) Madras, and (b) Bombay, and		(b) the consignee shall be one of the persons or shall belong to one of the classes of persons specified in the proviso to clause (a) of sub rule (1) of rule 39
(ii) the Deputy Commissioner of Police in Calcutta		(c) the Commissioner or Deputy Commissioner shall keep a list of such licences,
(iii) The District Magistrate of Karachi		(d) no such officer may grant a licence for the export to a State in India of any arms in respect of which the prohibition imposed by rule 7 applies unless such arms have been lawfully imported into British India, and are required for the personal use of persons, or members of the classes specified in Schedule I
(5) The District Magistrate of Malabar	Mahe.	
(6) The Secretary to the Government of Bombay in the Political Department.	Portuguese India	
(7) (a) The Board of Revenue in Madras.	(b) Pondicherry and the other French Settlements in the Madras Presidency.	
(b) The Chief Secretary to the Government of Bengal	Chandernagore	
(8) The District Magistrate of Meerut.	(i) Any State in India, and (ii) Kurram, Chitral and Waziristan	For the export of ammunition only to States in India, and for the export of arms, and ammunition to Kurram, Chitral and Waziristan, subject to the following conditions, namely:—
		(a) the consignment for export shall consist only of sporting ammunition or sporting arms and ammunition in reasonable quantities for the personal use of the consigner.
		(b) the consignee shall be one of the persons or shall belong to one of the classes of persons specified in the proviso to clause (a) of sub rule (1) of rule 39, and
		India or Rajputana, shall be sent to the Agents to the Governor-General in Central India and Rajputana, respectively. In the case of Chitral, when the ammunition is to be exported by way of Peshawar, the Magistrate send a copy of the licence to

Officers	Place	Conditions
1	2	3
(J) the District Magistrate of Rawalpindi	Kashmir	<p>Political Officer for Dir Swat and Chitral for communication when necessary to the Assistant Political Officer in Chitral. If the consignment is forwarded by way of Kashmir a copy of the licence shall be sent to the Resident. In the case of Waziristan the Magistrate shall refer to the Political Officer Tochi or the Political Officer Wana according as the consignment is for Tochi or for elsewhere in Waziristan.</p> <p>(a) The consignment for export shall consist only of sporting ammunition in reasonable quantities for the personal use of the consignee.</p> <p>(b) the consignee shall be one of the persons or shall belong to one of the classes of persons specified in the proviso to clause (a) of sub-rule (1) of rule 39 and</p> <p>(c) the Magistrate shall keep a list of all licences issued by him</p>
(10) The District Magistrates of Delhi, Karachi and Lahore	Any State in India	Ditto
(10A) The District Magistrate of Ajmer Merwara	District Ajmer States in Rajputana and Central India	Ditto
(11) All Political Officers in— (1) Hyderabad	The States with which they are in political relations and any territory with in their administrative control	<p>(a) No licence shall be granted for the export of—</p> <p>(i) cannon or</p> <p>(ii) military stores of any kind other than sulphur or</p> <p>(iii) save as hereinafter provided such rifles muskets pistols or revolvers as are specified in clause (a) of sub-rule (1) of rule 7 or</p> <p>(iv) save as hereinafter provided ball ammunition which can be fired from rifles of 303 or 450 bore or from muskets of 110 bore or from pistols or revolvers of 411 455 or any intermediate bore</p> <p>(b) licences for the export of rifles muskets revolvers or pistols of the bores specified in sub-clause (iii) of head (a) may be granted to persons or members of the classes specified in Schedule I who are exempted in respect thereof</p> <p>(c) licences for the export of car</p>
(2) Mysore		
(3) Central India		
(4) Rajputana		
(5) Beluchistan		
(6) Western India		
(7) Punjab States		
(8) Baroda and Gujarat		
(9) Kashmir		
(10) Cawhor		
(11) Sikkim		
(12) Midday States		
(13) Deccan States and Kolhapur		
(14) Eastern States		
(b) The Political Agent Tripura State		
(c) The Agent to the Governor for Burma		
(d) The Superintendent Simla Hill States		

Officers 1	Place. 2	Conditions 3
(e) The Commissioner, Ambala Division		tridges may be granted to persons, or members of the class specified in Schedule I who are exempted in respect thereof, subject to the following conditions, namely —
(f) The Political Officer in Manipur		(i) that save in the case of cartridges for use with rifles of 577/450 and 500/450 bores, the number of such cartridges shall not exceed two hundred in any one year and
(g) All Political Officers and Deputy Commissioners in the North West Frontier Province		(ii) that the cartridges are for the personal use of the licensees.
(h) the Commissioner of the Rajshahi Division		
(i) The Deputy Commissioner in the Khasi and Jaintia Hills		
(12) (a) The Honble the Agent to the Governor-General and Chief Commissioner in Baluchistan	Any place within the political jurisdiction of His Britannic Majesty's Consul General and Agent of the Government of India in Khoraan or of His Britannic Majesty's Consul for Sistan and Kaim.	
(a) the Secretary to the Government of Bombay in the Political Department and		
(b) the Chief Secretary to the Government of Bengal		
(13) The Chief Secretary to the Government of Burma	Any State in India within the political charge of the Government of Burma, and any place in Siam or China	Subject, in the case of export to Siam or China to the condition that the consignee has obtained sanction to the import of the consignment from the Siamese or Chinese authorities concerned.
(14) The Commanding Officer of a Gurkha Battalion	Nepal	For the export of kukris in the possession of discharged Gurkha sepoys on their departure from the battalion to Nepal.
(15) The British Envoy at the Court of Nepal	Nepal	For the export of shot gun ammunition to discharged or pensioned officers, non commissioned officers or men of Gurkha Regiments.

SCHEDULE VII.

[See Rule 46 (6)]

PERSONS TO WHOM NO FEE IS CHARGEABLE FOR A LICENCE IN FORM XVI IN RESPECT OF CERTAIN ARMS.

Persons	Arms and Ammunition.
(1) (a) Any Viceroy's commissioned officer, any Indian officer of the Indian State Forces, whether in service or retired and in receipt as such of a pension,	All
(b) any warrant officer of His Majesty's Naval, Military or Air Forces, whether in service or retired and in receipt as such of a pension,	
(c) any chief petty officer, petty officer, non commissioned officer, seaman soldier or	

Persons	Arms and Ammunition.
<p>airman of His Majesty's Naval, Military or Air Forces,</p>	<p>Such arms as were actually in a person's possession at the time of his discharge, or transfer to the Reserve, together with a reasonable quantity of ammunition for the same</p>
<p>(d) any person who was enrolled as a member of a Corps of Volunteers under the Indian Volunteers Act, 1869 (XX of 1869), or who was a member of the Indian Defence or was a member of the Auxiliary Force, India, and who has been awarded the Volunteer Officers' Decoration or the Long Service Medal, and any person who was a member of the Auxiliary Force, India, and who has been awarded the Volunteer Officers' Decoration or the Long Service Medal and any person who was a member of the Auxiliary Force, India, or of the Indian Territorial Force and who has been awarded the Efficiency Decoration or the Efficiency Medal,</p> <p>(e) any officer of the Auxiliary Force, India, who has been awarded the Volunteer Officers' Decoration or the Long Service Medal, any officer of the Auxiliary Force, India, or of Indian Territorial Force, who has been awarded the Efficiency Decoration or the Efficiency Medal and any warrant officer, non commissioned officer or soldier in the</p>	
<p>(f) Special Police, Eastern Frontier Rifles, the Frontier Irregular Corps of the North West Frontier Province and the Andaman and Nicobar Islands Military Police whether in service or retired, and in receipt as such of a pension, and</p> <p>(g) non commissioned officer and men of the Burma Military Police, Assam Rifles, Malabar Special Police, Eastern Frontier Rifles, the Frontier Irregular Corps of the North West Frontier Province and the Andaman and Nicobar Islands Military Police nominated in this behalf by Commandants of Battalions to a number not exceeding five in each Company.</p>	
<p>(2) (a) Any person, below the rank of warrant officer who has been discharged from His Majesty's naval, military or air forces and who is in receipt as such of a pension or has been transferred to the Army, Naval or Air Force Reserve and who is designated in this behalf by the officer commanding his unit or department, or</p> <p>(b) any person below the rank of commissioned officer who has been discharged from any unit of the Imperial Service Troops or Indian State Forces and who is in receipt as such of a pension and who is designated in this behalf by the officer commanding the unit.</p>	<p>Revolvers or automatic pistols which formed part of equipment when in employment as such officer together with a reasonable quantity of ammunition for the same.</p>
<p>(3) Any ex-officer of His Majesty's naval, military or air forces, so long as he is entitled to wear the uniform of such force or by any officer of the Indian Army Reserve after release from army service.</p> <p>(4) Any officer of a Volunteer Corps, the Indian</p>	

Persons	Arms and Ammunitions
Defence Force the Auxiliary Force, India, or the Indian Territorial Force who has been granted honorary rank on retirement and permitted to wear the uniform of such corps or force	Arms which formed part of equipment when in employment as such officer, together with, where necessary, a reasonable quantity of ammunition for the same
(5) Retired police officers who are permitted to wear on ceremonial occasions or when calling on Government officials the uniform of the rank which they held in the force at the time of retirement	Revolvers which formed part of equipment as a police officer together with a reasonable quantity of ammunition for the same
(6) The heirs or successors of persons holding swords or other arms received by them as gifts from the Governor General in Council or a Local Government	Such arms as were received as gifts together with where necessary, a reasonable quantity of ammunition for the same
(7) Government servants whose possession of arms—such possession not being exempt from the provisions of the Act under section 1 (b) thereof—is declared by the Local Government to be in the public interest	Such arms and ammunition as are specified in the declaration

Notes.—Schedule VII only deals with exemptions from payment of fee chargeable for licence 34 Cr L J, 112=A I R 1932 Rang 180

SCHEDULE VIII

(See Rule 2)

FORM I

(See Rules 5, 23 and 30)

FREE OF ALL FEE

Licence for the import, transport, possession of cannon, articles designed for torpedo service, tear rockets or machinery for the manufacture of arms or ammunition

Name, description and residence of licensee and agent (if any)	Number of packages	Description with specification of calibre of cannon or other articles	Number of articles	COLUMNS TO BE FILLED UP IN CASE OF IMPORT OR TRANSPORT			Period for which the licence is valid	Use to which the articles are to be put.
				Place of despatch and route	Place of destination	Name, description and residence of consignee		
1	2	3	4	5	6	7	8	9
							Form the—	
							—to the	
							—19 .	

The of 19

Date on which a copy is sent
to the Commissioner of
Police

District Magistrate of
the district

Seal

(Signature)

Secy to the Govt of India,
Home Department

The of 19

Conditions

1 ml

Arms Act 1878,

- (a) on a ship not be broken before the articles reach the place of destination, and
(b) the articles shall be delivered only to a person lawfully entitled to receive them

FORM II

(See Rules 8 and 9)

FEE—

(a) where granted under rule 8 (d) FREE OF ALL FEE

(b) where granted under rule 9 ONE RUPEE

(c) in any other case TEN RUPEES

Licence for the import of arms, ammunition or military stores into the port of—

Name des- cription and residence of licencee and agent (if any)	Num- ber of pack- ages	ARMS		AMMUNITION OR MILITARY STORES		Purpose for which re- quired	Value of the fire- arms per piece	Place where articles are to be depo- sited or to which they are to be despatched	Period for which the licence is valid
		De- scrip- tion	Num- ber	De- scrip- tion	Weight in seers or number				
1	2	3	4	5	6	7	8	9	10
									From the — to the — 19

(Signature)

The of 19

Seal

Commissioner of Police
District Magistrate of the district
Secretary to the Government of Madras

Conditions

- 1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878 and of the Indian Arms Rules 1924
- 2 An account of the contents of each package shall be legibly written thereon
- 3 The articles shall be either—

section 7 of the Indian Arms Act, 1878, in a warehouse licensed under section 16 of the Sea Customs Act or

(b) forthwith de patched to their place of destination

FORM III

(See Rule 10)

FFE—

- (a) where granted under rule 10 (1), FIVE RUPEES,
- (b) where granted under rule 10 (2), FREE OF ALL FEE

Licence for the import of arms ammunition or military stores by land or river

Name description and residence of licensee and agent (if any)	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Place of despatch and route	Purpose for which required	Place of destination	Name description and residence of consignee	Period for which the licence is valid
		Description	Number	Description	Weight in seers or number					
1	2	3	4	5	6	7	8	9	10	11
										From —the —to the —19 .

(Signature)

The of 19 .

Seal

Commissioner of Police
District Magistrate of the district
Political Officer for the State

Date on which a copy is sent to the

The of 19

{ Political Officer for the State [rule 10 (3)].
District Magistrate of the district [rule 10 (4)].
Station Master at the station [rule 10 (6)].

Conditions.

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878, and of the Indian Arms Rules 1924

2 The articles shall not be conveyed by any route other than that specified in column 7, and bulk shall not be broken, nor shall the consignment be stopped, before the articles reach the place of destination

3 An account of contents of the each package shall be legibly written and where the articles are conveyed by rail each package shall be marked with the or expression 'Arms' 'Ammunition' or 'Military Stores,' as the case may be, so be readily recognizable by the railway authorities

FORM IV

(See Rule 15)

FEE—

- (a) where granted under rule 15(2) (a) to (d) TEN RUPEES or
in the case referred to in rule 46(2) ONE RUPEE,
(b) where granted under rule 15 (2) (e), FIFTY OF ALL FIVE

*Licence for the export by sea of arms ammunition or military stores from
the port of _____ to the port of _____*

Name, description and residence of licensee and agent (if any)	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Port to which consignment is to be despatched	Period for which the licence is valid and the amount of fee charged
		Description	Number	Description	Weight in seers or number		
1	2	3	4	5	6	7	8
							From the _____ to the _____ 19 .

The _____ of 19 _____ { Date on which the previous sanction of the
Commissioner of Police _____
_____ (District signature)

The _____ of 19 _____ { _____ seal
District Magistrate of the
district [rule 15 (4)]
Commissioner of Police
The _____ of 19 _____ { District Magistrate of the _____ district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878 and of the Indian Arms Rules 1924

2 Where the consignment is to be despatched to an Indian port, the licence shall not be valid for export to any port other than that entered in column 7

FORM V

(See Rule 16)

FEE—FIVE RUPEES

*Licence for the export by sea of arms ammunition or military stores from the
port of _____ to the port of _____*

Name description and residence of licensee and agent (if any)	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Place of despatch and route	Purpose for which required	Place of destination	Name description and residence of consignee	Period for which the licence is valid
		Description	Number	Description	Weight in seers or number					
1	2	3	4	5	6	7	8	9	10	11
										From the _____ to the _____ 19 .

(Signature)
Secretary to the Govt of India, Foreign and Political Dept

Officer specially empowered under rule 16

The _____ of _____ 19____
at _____

The _____ of _____ 19____
at _____

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878 and of the Indian Arms Rules, 1921.

2 The articles shall not be conveyed by any route other than that specified in column 7, and bulk shall not be broken, nor shall the consignment be stopped, before the articles reach the place of destination

3 An account of the contents of each package shall be legibly written thereon, and where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms", "Ammunition" or "Military Stores", as the case may be, so as to be readily recognizable by the railway authorities

FORM VI.

(See Rule 17)

FEE—FIVE RUPEES

Licence for the export by _____
land or river of— { arms, ammunition or military stores to— in the
State
arms, ammunition or military stores to the—
State in political relations with the Govern-
ment of

Name description and residence of licensee and agent (if any)	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Place of despatch and route	Purpose for which required	Place of destination	Name description and residence of consignee	Period for which the licence is valid
		Description.	Number.	Description.	Weight in seers or number					
1	2	3	4	5	6	7	8	9	10	11
										From the _____ to the _____—19 .

The _____ of _____ 19____ { Date on which the previous sanction of the Political Officer for the State Commissioner of Police _____
District Magistrate of the _____ district, is obtained (rule 39 (1)).
(Signature)
The _____ of _____ 19____ { Date on which a copy is sent to the Political Officer for the State [rule 17 (3)]
District Magistrate of the _____ district [rule 17 (4)].

The of 19

{	Commissioner of Police — [rule 17 (5) (a)]	Secy to the Govt of India, Foreign and Political Dept
	District Magistrate of the — district [rule 17 (5) (a)]	Officer specially empowered under rule 17
	Station Master at the — Ry Station [rule 17 (5) (b)]	Secy to the Govt of

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878, and of the Indian Arms Rules 1924

2 The articles shall not be conveyed by any route other than that specified in column 7 and bulk shall not be broken nor shall the consignment be stopped before the articles reach the place of destination

written thereon and
ced with the word or
ase may be so as to be

FORM VII

(See Rule 24)

FEF--TEN RUPEES

License for the transport of arms ammunition or military stores

Name description and residence of licensee and agent (if any) authorised for the purpose of this consignment	Licensee's place of business if any	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Place of despatch route and mode of transit	Place of destination	Name description and residence of consignee	Period for which the licence is valid
1	2	3	Description	Number	Description	Weight in seers or number	8	9	10	11
										From the—to the— —19

The of 19

The of 19—

{ Date on which a copy is sent to the Commissioner of Police — [rule 24 (2) (a)]
District Magistrate of the — district [rule 24 (2) (b)]
Magistrate at — [rule 24 (3)]

Seal

(Signature)
Commissioner of Police
District Magistrate of the
district

'he of 19 .

Conditions.

- 1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924
- 2 The articles shall not be conveyed by any route other than that specified in column 8 and bulk shall not be broken nor shall the consignment be stopped before the articles reach the place of destination
- 3 An account of the contents of each package shall be legibly written thereon and where the articles are conveyed by rail each package shall be marked with the word or expression Arms Ammunition or Military Stores as the case may be so as to be readily recognizable by the railway authorities
- 4 The articles shall be delivered only to a person lawfully entitled to receive them

FORM VIII

(See Rules 26 and 27)

FEE—TEN RUPEES

Licence for the import transport and re export of arms ammunition or military stores
export and re import

Name description and residence of licensee and agent (if any) authorised for the purpose of this consignment	Licence a place of business if any	Number of packages	ARMS		AMMUNITION OR MILITARY STORES		Place of despatch, route and mode of transit	Place of destination	Name description and residence of consignee	Period for which the licence is valid
			Description	Number	Description	Weight in seers or number				
1	2	3	4	5	6	7	8	9	10	11

The _____
of _____
_____ 19__

Date on which copy is sent to the—
(a) other _____ Political Officer _____
licensing authority _____ concern
ed [Rule 26 (2) (a)]
27 (2) (a)]
(b) District Magistrate of _____
_____ District [Rule
26 (3)
27 (2) (b)]
(c) Station Master at the _____
_____ railway station [Rule
26 (2) (a)]
27 (2) (a)]

(Signature)

Political Officer
Officer specially
empowered under
Rule 27

_____ State

The

193

Conditions

1. This licence is granted subject to all the provisions of the Indian Arms Act 1878 (XI of 1878) and of the Indian Arms Rules 1924
- 2 The articles shall not be conveyed by any route other than that specified in column 8 and bulk shall not be broken nor shall the consignment be stopped before the articles reach the place of destination

Conditions.

1. This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2. The licensee shall maintain registers of all arms manufactured or converted of all ammunition and military stores manufactured of all stock in hand and of all sales in such form as the Local Government may direct

3. He shall exhibit his stock and his registers on the demand of any Magistrate or any Police officer of a rank not below that of Inspector or if the Local Government so directs of Sub Inspector

4. (1) He shall affix on a conspicuous part of his place of business factory or shop a signboard on which shall be painted in large letters in English and in the vernacular of the district his name and the words Licensed to manufacture (or Licensed to deal in as the case may be) arms ammunition and military stores

(2) He shall also affix in his place of business factory or shop a copy of section 28 of the Indian Arms Act 1878 either in English or in the vernacular of the district

Province and
of purchase
in the licence

(a) the name description and residence of the person who takes delivery of the articles sold

(b) the nature and quantity of the articles sold and

(c) the date of sale

and shall sign the endorsement

6. He shall at the time of the sale of a weapon enter in his register the number and marks if any stamped on the weapon at the time of manufacture

7. He shall give information of all sales of arms ammunition and military stores to such person and in such manner as the Local Government may direct

8. He shall not sell to any person licensed to possess or carry arms ammunition in excess of the maximum which may be fixed by the Local Government for such person and which is endorsed on such person's licence

9. He shall not sell arms ammunition or military stores elsewhere than at the place of business factory or shop specified in column 3

11. He shall not keep Government arms, ammunition or military stores or unless he is specially authorized in this behalf by the Local Government or in Sind by the Commissioner in Sind, keep or sell revolvers manufactured out of India or magazine pistols

Explanation—For the purposes of this condition—

(a) Government arm means a fire arm or other weapon which is the property of the Government and

(b) Government ammunition and Government military stores mean respectively ammunition and military stores manufactured in any Government factory or prepared for and supplied to the Government

any local area in Bengal or Assam the
out a special permit from a Magistrate
Government may from time to time by

13. (1) Where the licence is granted in and for any local area in Burma the licensee shall not save as herein otherwise provided sell arms ammunition or military stores to or for the use of any person without the sanction in writing of the District Magistrate of the district in which such person resides or of the Commissioner of Police if the person resides in Rangoon

(2) Nothing in this condition shall be deemed to apply to sales to or for the use of—

(a) any person who is exempted under entry (1) (4) or (6) (e) of the table appended to Schedule I to the Indian Arms Rules 1924 from the prohibitions and d contained in sections 13 to 15 of the Indian Arms Act 1878, or

(b) any person whose name is included in a list compiled by the District Magistrate for this purpose, and who declares that he purchases for his own use.

14 (1) Where the licence is granted in and Frontier Province or the Dera Ghazi Khan district of the Punjab, the licensee shall not, save as ammunition or military stores to or for the use of writing of the District Magistrate of the district in which such person resides

(2) Nothing in this condition shall be deemed to apply to sales to, or for the use of,—

(a) any person who is exempted under entry (1), (2), (3), (4), or (6) (d) of the table appended to Schedule I to the Indian Arms Rules, 1921 from the prohibitions and directions contained in sections 13 to 15 of the Indian Arms Act, 1878, or

(b) any villagers residing in those portions of the North West Frontier Province which are specified in entries (8) and (9) of Schedule IV to those Rules as withdrawn from the operation of certain sections of that Act or

(c) any person whose name is included in any list compiled by the District Magistrate for this purpose and who declares that he purchases for his own use.

15 The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms ammunition or military stores covered by the licence.

FORM X

[See Rule 28 (1) (b)]

FEE—TEN RUPEES

Licence to sell and keep for sale arms ammunition or military stores (other than breech loading rifles, rifle ammunition or military stores for rifles)

Serial number of licence	Name description and residence of licensee and of duly authorised agent or agents if any	Place of business or shop	Description and number of arms	Description and quantity of ammunition or military stores	Date on which the licence expires
1	2	3	4	5	6
					In Burma— The 31st March, 19 .
					Elsewhere— The 31st December, 19 .

(Signature)

The of 19 .

Seal

Commissioner of Police

District Magistrate of the ——— district

* Deleted by Government of India notification No F 21 46 31 dated the 30th December, 1931.

[illegible]

12 Where the licence is granted in and for any local area in Bengal or Assam, the licensee shall not sell arms or ammunition, without a special permit from

Magistrate to any member of a hill tribe to which the Local Government may from time to time by notification apply this condition

(1) Nothing in this condition shall be deemed to apply to sales to or for the use of —

(a) any person who is exempted under entry (1) (4) or 6 (e) of the table appended to Schedule I to the Indian Arms Rules, 1924 from the prohibitions and directions contained in sections 13 to 15 of the Indian Arms Act 1878 or

(b) any person whose name is included in any list compiled by the District Magistrate for this purpose and who declares that he purchases for his own use

writing of the District Magistrate of the district in which such person resides

(2) Nothing in this condition shall be deemed to apply to sales to or for the use of —

(a) any person —
appended to Schedule
tions contained in sec

(b) any villager
which are specified
from the operation of certain sections of that Act or

(c) any person whose name is included in any list compiled by the District Magistrate for this purpose and who declares that he purchases for his own use

15 The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms, ammunition or military stores covered by the licence

FORM VI

[See Rule 28 (a) (a)]

FEE—

(a) where the licensee holds a licence in Form IV—FREE OF ALL CHARGE

(b) in all other cases—TWENTY RUPEES

Licence to manufacture convert sell or keep for sale breech loading rifles parts of breech loading rifles rifle ammunition or military stores for rifles

Serial number of licence and of duly authorised agent or agents if any	Name description and residence of licensee	Place of business factory or shop	Description and number of arms		Description and quantity of ammunition or military stores		Date on which licence expires
			To be manufactured or converted	To be sold or kept for sale	To be manufactured	To be sold or kept for sale	
1	2	3	4	5	6	7	8
							In Burma— The 31st March 19 Elsewhere— The 31st December 19

The _____ of _____ 19____

[Seal]

(Signature)
Secretary to the
Commissioner in District _____

Form for renewal of the Licence

Date and year of renewal	Date on which the renewed licence expires	
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules, 1924

2 The licensee shall maintain registers of all arms ammunition and military stores in stock and of all sales, in such form as the Local Government may direct

3 He shall exhibit his stock and his registers on the demand of any Magistrate, or any Police officer of a rank not below that of Inspector, or, if the Local Government so directs of Sub-Inspector

(2) He shall also affix in his place of business factory or shop a copy of section 28 of the Indian Arms Act 1878 either in English or in the vernacular of the district

(a) the name description and residence of the person who takes delivery of the articles sold

(b) the nature and quantity of the articles sold, and

(c) the date of sale,

and shall sign the endorsement

6 He shall at the time of the sale of a weapon enter in his register the number and marks if any, stamped on the weapon at the time of manufacture

7 He shall give information of all sales of arms ammunition and military stores to such person and in such manner as the Local Government may direct

8 He shall not sell breech loading rifles, parts of breech loading rifles, rifle ammunition or military stores for rifles elsewhere than at the place of business, factory or shop specified in column 3

9 He shall not keep Government arms, ammunition or military stores

Explanation—For the purposes of this condition—

(a) 'Government arm' means a fire arm or other weapon which is the property of the Government, and

(b) 'Government ammunition' and 'Government military stores' mean respectively, ammunition and military stores manufactured in any Government factory, prepared for and supplied to Government

... military stores to an Indian officer, non
unless such person pro
and then only to the

... the licensee
breech
person
in which
sides in

Rangoon

(2) Nothing in this condition shall be deemed to apply to sales to or for the use of,—

(a) any person who is exempted under entry (1) (1), or 6 (c) of the table appended to Schedule I to the Indian Arms Rules, 1924 from the prohibitions and directions contained in sections 13 to 15 of the Indian Arms Act 1878, or

(b) any person whose name is included in any list compiled by the District Magistrate for this purpose, and who declares that he purchases for his own use

12 (1) Where the licence is granted in and for any local area in the North West Isakhel tahsil of the Mianwah herein otherwise provided sell ammunition or military stores for action in writing of the District

(2) Nothing in this condition shall be deemed to apply to sales to, or for the use of —

(a) any person who is exempted under entry (1) (2), (3), (4) or 6 (d) of the table appended to Schedule I to the Indian Arms Rules 1924, from the prohibitions and directions contained in sections 13 to 15 of the Indian Arms Act, 1878 or

(b) any person whose name is included in any list compiled by the District Magistrate for this purpose, and who declares that he purchases for his own use

13 The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms ammunition or military stores covered by the licence

FORM VII

[See Rule 28 (2)]

FEE—

(a) where the licensee already holds a licence in Form A—1 REE O1 ALL CHARGE ,
(b) in all other cases—TEN RUPEES

*Licence to sell and keep for sale breech loading rifles parts of breech loading rifles,
rifle ammunition or military stores for rifles*

Serial number of licence 1	Name descrip tion and resi dence of licensee and of duly authorised agent or agents if any 2	Place of business or shop 3	Description and number of arms 4	Description and quantity of ammunition or military stores 5	Date on which the licence expires 6
					In Burma— The 31st March, 19 Elsewhere— The 31st December, 19 .

(Signature)

Secretary to the—
Commissioner in Sind —

The of 19

Form for renewal of the Licence.

Date and year of renewal.	Date on which the renewed licence expires	Secretary to the Local Government — Commissioner in Sind — Commissioner [if empowered under the proviso to rule 37 (3)]

Conditions.

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878, and of the Indian Arms Rules, 1924.

2 The licensee shall not sell or dispose of all arms, ammunition and military stores, except to the Government, or to any person authorized by the Government, or to any Magistrate, or any person so directed, or to any person authorized by the Magistrate, or any person so directed, or to any person authorized by the Sub-Inspector.

sold,

(b) the nature and quantity of the articles sold, and
(c) the date of sale,

or the number and
military stores to
than at the place

9 He shall not keep Government arms, ammunition or military stores.

Explanation—For the purposes of this condition—

(a) "Government arm" means a fire arm or other weapon which is the property of the Government, and

(b) "Government ammunition" and "Government military stores" mean, respectively

or an Indian officer, non-
unless such person pro-
Officer, and then only to

licensee shall not, save as herein otherwise provided, sell breech loading rifles, or

tary stores for rifles to, or for the use of the District Magistrate of the district or of Police, if the person resides in

Rangoon

sales to, or for the use of,—
6 (e) of the table appended
the prohibitions and directions
or

(b) any person whose name is included in any list compiled by the District Magistrate for this purpose and who declares that he purchases for his own use

12 (1) Where the licence is granted in and for any local area in the North West Frontier Province or the Dera Ghazi Khan District or the Isakhel tahsil of the Mianwali District or rifles
Magistrate

(2) Nothing in this condition shall be deemed to apply to sales to, or for the use of—

(a) any person who is exempted under entry (1), (2) (3) (4) or 6 (d) of the table appended to Schedule I to the Indian Arms Rules 1924, from the prohibitions and directions contained in sections 13 to 15 of the Indian Arms Act 1878, or

(b) any person whose name is included in any list compiled by the District Magistrate for this purpose and who declares that he purchases for his own use

13 The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms ammunition or military stores covered by the licence

FORM XIII

(See Rule 29.)

FEE OF ALL FEE

License for the possession by holders of licences in Forms IX, X, XI or XII of fire arms and ammunition deposited by their owners for safe keeping

Name description and residence of licensee and of duly authorized agent or agents if any 1	Description of fire arms 2	Place (with description, where articles are to be kept) 3	Period for which the licence is valid 4

* Note—A licence in this Form will be granted for a period ending on the day on which the licensee's licence in Form IX, X, XI or XII as the case may be is due to expire

Seal

The of 19 .

(Signature)

Commissioner of Police—

District Magistrate of the—district

Sub divisional Magistrate of the—district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878, and of the Indian Arms Rules, 1924

2 It covers only fire arms and ammunition of the description given in column 2 so

long as they are kept in the place described in column 3, but does not authorise the licensee—

(i) to go armed or

(ii) to keep Government arms or ammunition

Explanation—For the purpose of this condition—

(a) Government arm means a fire arm or other weapon which is the property of the Government and

(b) Government

in any Govern

in his possession

the demand of

if the Local

Government so directs of Sub Inspector

5 The licensee shall forthwith give information at the nearest police station of the loss or theft of any arms or ammunition covered by the licence

FORM XIV

(See Rule 31)

FREE OF ALL FEES

*License for the possession of arms (others than pistols or revolvers)
ammunition or military stores*

Name description and residence of licensee and agent (if any)	Number and description of arms	AMMUNITION OR MILITARY STORES		Place (with description where articles are to be kept)	Period for which the licence is valid
		Description	Quantity		
1	2	3	4	5	6

(Signature)

Commissioner of Police _____

District Magistrate of the _____ district

The of 19

Seal

Sub divisional Magistrate of the _____ district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2 It covers only the arms ammunition and stores specified in columns 2 3 and 4 so long as they are kept in the place prescribed in column 5 but does not authorise the licensee—

(a) —

other weapon which is the property

of the Government and

(b) Government ammunition means ammunition manufactured in any Government factory or prepared for and supplied to Government

3 Condition 2 (ii) may be cancelled by the authority granting the licence if empowered to do so by the Local Government and an endorsement added showing the Government arms and ammunition which the licensee is authorised to possess

4 The licensee shall forthwith give information at the nearest police station the loss or theft of any arms covered by the licence

5 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapon for which it has been granted is still in the possession of the licensee, and may require the production of the weapon for the purpose of such an inquiry

Note 1—A licence in this form may be granted for any period not exceeding three years

Note 2—Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under section 27 of the Act) they are required to give notice forthwith of the sale together with particulars as to the name and address of the purchaser to the Magistrate of the district or to the officer in charge of the nearest police station. Failure to give notice as required above is punishable with imprisonment for a term which may extend to 3 years or with fine or with both

FORM XV
(See Rule 32)

FEE—

- (a) for each breech loading pistol or revolver—TEN RUPPEES
(b) for any other breech loading weapon—FIVE RUPPEES
(c) for other weapons—EIGHT RUPPEES in disarmed districts and FOUR RUPPEES elsewhere for each weapon

The abovementioned fees are for licences granted for periods of one year or less. A licence in this form may be granted for any period exceeding one year and not exceeding three years in which case a compounded fee shall be levied

Licence for the possession and use for the purpose of target practice, of fire arms and ammunition

Serial number of licence	Name description and location of mess club or association	Arms or ammunition that licensee is entitled to possess		Place with in which the licence is valid	Date on which the licence expires unless previously ceasing to be in force under the proviso* to sub rule (1) of rule 42	Date on which the licence or the arms or both shall be produced for inspection before the licensing authority under sub rule (1) of rule 42
		Description	Quantity			
1	2	3	4	5	6	7

* Provided that where a licence is granted in Form XV for the possession of arms to be acquired by the licensee subsequently to the grant of the licence the authority granting the licence shall at the time of granting the same direct that within a period specified by him in this behalf which he may from time to time extend the arms covered by the licence shall be acquired and that the licence or the arms or both shall be produced for his inspection and if within the period so specified or extended the licensee fails to acquire the arms or to produce the licence or the arms or both as the case may be, the licence shall cease to be in force

Seal

The of 19

(Signature)

Commissioner of Police—
District Magistrate of the—district
Subdivisional Magistrate of the—district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 (XI of 1878) and of the Indian Arms Rules 1924

2 It covers only the mess club or association named and the arms and ammunition described therein

3 The mess club or association at the time of purchasing any new arms and in the North West Frontier Province and in Assam at the time of purchasing ammunition and elsewhere at the time of purchasing ammunition for rifles other than 22 bore revolvers or pistols shall cause the following particulars to be endorsed upon its licence under the vendor's signature namely—

(a) the name description and residence of the person who takes delivery of the articles purchased on behalf of the mess club or association

(b) the nature and quantity of the articles purchased and

(c) the date of purchase

and if the arms or ammunition are purchased from any person other than a licensed dealer shall also cause the particulars specified in clauses (b) and (c) to be furnished in writing to the authority who granted this licence within such period as may be prescribed by that authority for this purpose

4 The mess club or association shall not purchase ammunition in excess of the maximum which may from time to time be fixed by the Local Government or in the Madras Presidency the Board of Revenue

5 The mess club or association shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

6 The licence does not authorise any member of the mess club or association to keep Government arms or ammunition

*Explanation—*For the purposes of this condition—

(a) Government arm means a fire arm or other weapon which is the property of the Government

(b) Government ammunition means ammunition manufactured in a Government factory or purchased from a Government factory

7 The Local Government or Board of Revenue shall not require any fire arm or other weapon registered in such licence to be kept in such place as the Board of Revenue thinks fit

8 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapons for which it has been granted are still in the possession of the mess club or association and to require the production of such weapons for the purposes of such inquiry

*Note—*Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person

above is punishable with imprisonment for a term with fine or with both

FORM XVI
(See Rule 33)

FEE—(1) If the licence is granted for ammunition of the kind referred to in rule 33 (1) proviso (ii)—FREE OF ALL FEE

and

(i) for a breech loading pistol or revolver—TEN RUPEES

(ii) for any other breech loading weapon—FIVE RUPEES (in the North West Frontier Province—TWO RUPEES)

(iii) for other weapons—EIGHT ANNAS in disarmed districts and FOUR ANNAS elsewhere

for each weapon

Provided that in Burma licences granted for the purpose of village defence shall be

be first

pect

5 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapon for which it has been granted is still in the possession of the licensee and may require the production of the weapon for the purpose of such an inquiry

Note 1—A licence in this form may be granted for any period not exceeding three years

Note 2—Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under section 27 of the Act) they are required to give notice forthwith of the sale together with particulars as to the name and address of the purchaser to the Magistrate of the district or to the officer in charge of the nearest police station. Failure to give notice as required above is punishable with imprisonment for a term which may extend to 3 years or with fine or with both

FORM XV
(See Rule 32)

FEE—

- (a)
(b)
(c)

elsewhere for each weapon

ts, and FOUR ANNAS

The abovementioned fees are for licences granted for periods of one year or less. A licence in this form may be granted for any period exceeding one year and not exceeding three years in which case a compounded fee shall be levied

License for the possession and use for the purpose of target practice, of fire arms and ammunition

Serial number of licence	Name description and location of mess club or association	Arms or ammunition that licensee is entitled to possess		Place with in which the licence is valid	Date on which the licence expires unless previously ceasing to be in force under the proviso* to sub rule (1) of rule 42	Date on which the licence or the arms or both shall be produced for inspection before the licensing authority under sub rule (1) of rule 42
		Description	Quantity			
1	2	3	4	5	6	7

* Provided that where a licence is granted in Form XV for the possession of arms to be acquired by the licensee subsequently to the grant of the licence the authority granting the licence shall specify by him in this be

Seal

(Signature)

The of 19 .

Commissioner of Police _____
District Magistrate of the _____ district
Subdivisional Magistrate of the _____ district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 (VI of 1878) and of the Indian Arms Rules 1924

2 It covers only the mess club or association named and the arms and ammunition described therein

3 The mess club or association at the time of purchasing any new arms and in the North West Frontier Province and in Assam at the time of purchasing ammunition and elsewhere at the time of purchasing ammunition for rifles other than 22 bore revolvers or pistols shall cause the following particulars to be endorsed upon its licence under the vendor's signature namely—

(a) the name, description and residence of the person who takes delivery of the articles purchased on behalf of the mess club or association

(b) the nature and quantity of the articles purchased and

(c) the date of purchase

and if the arms or ammunition are purchased from any person other than a licensed dealer shall also cause the particulars specified in clauses (b) and (c) to be furnished in writing to the authority who granted this licence within such period as may be prescribed by that authority for this purpose

4 The mess club or association shall not purchase ammunition in excess of the maximum which may from time to time be fixed by the Local Government or in the Madras Presidency the Board of Revenue

5 The mess club or association shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

6 The licence does not authorise any member of the mess club or association to keep Government arms or ammunition

Explanation—For the purposes of this condition—

(a) Government arm means a fire arm or other weapon which is the property of the Government

(b) Government ammunition means ammunition manufactured in a Government factory or prepared for and supplied to Government

7 The Local Government or in the Madras Presidency the Board of Revenue may require any fire arm or ammunition possessed by the mess club or association to be registered in such manner as the Local Government or in the Madras Presidency the Board of Revenue thinks fit

8 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapons for which it has been granted are still in the possession of the mess club or association and to require the production of such weapons for the purposes of such inquiry

Note—Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them (section 27 of the Act) they are particulars as to the name and add or to the officer in charge of the net above is punishable with imprisonment with fine or with both

FORM XVI

(See Rule 33)

FILE—I(1) If the licence is granted for ammunition of the kind referred to in rule 33 (1) proviso (ii)—FREE OF ALL FEE

licence is granted for the purposes

and

(i) for a breech loading pistol or revolver—TEN RUPEES

(ii) for any other breech loading weapon—FIVE RUPEES (in the North West Frontier Province—TWO RUPEES)

(iii) for other weapons—EIGHT ANNAS in disarmed districts and FOUR ANNAS elsewhere

for the purpose of village defence shall be

respect of licences granted for the first

5 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapon for which it has been granted is still in the possession of the licensee, and may require the production of the weapon for the purpose of such an inquiry

Note 1—A licence in this form may be granted for any period not exceeding three years

Note 2—Licensees are warned that in case they sell any arms or ammunition

or with one or with both

FORM XV
(See Rule 32)

FEE—

(a)
(b)
(c)

and FOUR ANNAS

year or less A
1 not exceeding

fire arms

and ammunition

Serial number of licence	Name descrip tion and loca tion of mess club or asso ciation	Arms or ammunition that licensee is entitled to possess		Place with in which the licence is valid	Date on which the licence ex pires unless previously ceasing to be in force under the proviso* to sub rule (1) of rule 42	Date on which the licence or the arms or both shall be produced for inspection before the licensing authority under sub rule (1) of rule 42
		Descrip tion	Quantity			
1	2	3	4	5	6	7

* Provided that where a licence is granted in Form XV for the possession of arms to be acquired by the licensee granting the licence shall at specified by him in this behalf by the licensee shall be acquired produced for his inspection and fails to acquire the arms or to pay the licence shall cease to be in force

Seal

The of 19 .

(Signature)

Commissioner of Police
District Magistrate of the district
Subdivisional Magistrate of the district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878 (VI of 1878) and of the Indian Arms Rules, 1924

2 It covers only the mess club or association named and the arms and ammunition described therein

3 The mess club or association at the time of purchasing any new arms, and in the North West Frontier Province and in Assam at the time of purchasing ammunition, and elsewhere at the time of purchasing ammunition for rifles other than 22 bore, revolvers or pistols shall cause the following particulars to be endorsed upon its licence under the vendor's signature namely—

(a) the name, description and residence of the person who takes delivery of the articles purchased on behalf of the mess club or association,

(b) the nature and quantity of the articles purchased, and

(c) the date of purchase

and if the arms or ammunition are purchased from any person other than a licensed dealer shall also cause the particulars specified in clauses (b) and (c) to be furnished in writing to the authority who granted this licence within such period as may be prescribed by that authority for this purpose

4 The mess club or association shall not purchase ammunition in excess of the maximum which may from time to time, be fixed by the Local Government or in the Madras Presidency the Board of Revenue

5 The mess club or association shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

6 The licence does not authorise any member of the mess, club or association to keep Government arms or ammunition

Explanation—For the purposes of this condition—

(a) "Government arm" means a fire arm or other weapon which is the property of the Government,

(b) "Government ammunition" means ammunition manufactured in a Government factory or prepared for and supplied to Government

7 The Local Government or in the Madras Presidency the Board of Revenue may require any fire arm or ammunition possessed by the mess, club or association to be registered in such manner as the Local Government or in the Madras Presidency the Board of Revenue thinks fit

8 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether the weapons for which it has been granted are still in the possession of the mess, club or association and to regulate the production of such weapons for the purposes of such inquiry.

Note—Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person

shall be liable to a fine of not less than Rs. 100 and not more than Rs. 500

or to imprisonment for not less than 6 months and not more than 2 years

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FORM XVI

(See Rule 33)

FIGURE I(a) If the licence is granted for ammunition of the kind referred to in

the following table, the fee for the licence shall be

the licence is granted for the purposes

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revolver—TEN RUPEES
 weapon—FIVE RUPEES, (in the North West
 ANNAS in disarmed districts and FOUR ANNAS
 elsewhere,

for each weapon.

Provided that in Burma licences granted for the purpose of village defence shall be

renewed for a period, of one year or less—

(i) in cases to which clause (b) in paragraph I applies,—the same fees, and

(11) in cases to
West Frontier Prov
ANNAS EIGHT (in th
(in the North West

provided that in such cases application for renewal is made within one month of the date on which the licence expires and if application is not made within that period the licensing authority may in his discretion levy fees at the original rate

III A licence in this form may be granted or renewed for any period not exceeding three years and if the period for which a licence is granted or renewed exceeds one year the fee shall subject to the proviso to clause (11) in para II be levied at the annual rates hereinbefore prescribed for grant or renewal as the case may be

*Licence for the possession of arms and ammunition and for going armed
for the purposes of sport [protection] display*

Serial number of licence	Name description and residence of licensee and agent if any	Arms and ammunition that licensee is entitled to possess		Retainers (if any) covered by the licence			Arms or ammunition that retainer is entitled to possess		Extent of validity of licence i.e., throughout India province or district	Date on which the licence expires unless previously ceasing to be in force under the proviso* to sub rule (1) of rule 42	Date on which this licence or the arms or both shall be produced for inspection before the licensing authority under the proviso to sub rule (1) of rule 42
		Brief description of each weapon with details of distinguishing marks etc	Quantity and description of each kind of ammunition	Name of retainer	Name of retainer's father	Address of retainer.	As in column 3	As in column 4			
1	2	3	4	5	6	7	8	9	10	11	12

* Provided that where a licence is granted in Form XVI for the possession of arms to be acquired by the licensee subsequently to the grant of the licence the authority granting the licence shall at the time of granting the same direct that within a period specified by him in this behalf, which he may from time to time extend the arms covered by the licence shall be acquired and that the licence or the arms or both shall be produced for his inspection and if within the period so specified or extended the licensee fails to acquire the arms and to produce the licence or the arms or both as the case may be the licence shall cease to be in force

Seal

The

of

17

(Signature)

District Magistrate of the _____ district
Subdivisional Magistrate of the _____ district

FORM XVI—*concl'd**Form of renewal of the licence*

Date and year	Date on which renewed licence expires	Signature
		<div data-bbox="576 324 674 413" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> Seal </div> <div data-bbox="591 430 969 690"> <p>Commissioner of Police _____</p> <p>Deputy Commissioner of Police _____</p> <p>Assistant Commissioner of Police _____</p> <p>District Magistrate _____</p> <p>_____ district</p> <p>Subdivisional Magistrate _____</p> <p>_____ Subdivision</p> <p>_____ district</p> </div>

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2 It covers only the persons named and the arms and ammunition described therein and such retainers (if any) as may be entered in column 5

3 This licence is valid to the extent specified in column 10 subject in the case of a licence having effect outside the province in which it is granted or renewed to any restrictions which may be imposed by any general or special order of a Local Government in respect of the territories administered by it or subject to its control

4 The licensee or any retainer acting under this licence shall not go armed with any arms covered thereby otherwise than in good faith for the purpose of sport [protection] display and save where he is specially authorised in this behalf in any Presidency town or Rangoon by the Deputy Commissioner of Police or in any other place by the Assistant Commissioner District Magistrate or a Subdivisional Magistrate he shall not take any such arms to a fair religious procession or other public assemblage

the North West Frontier
and elsewhere at the time
arms and pistols shall cause
the vendor's signature

namely —

(a) the name description and residence of the person who takes delivery of the

a licensed dealer
furnished in writing
prescribed for this

6 He shall not purchase ammunition for rifles other than 22 bore revolvers and pistols or in Assam ammunition of any kind in excess of the maximum which may from time to time be fixed by the Local Government

7 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

8 He shall not possess Government arms and ammunition

Explanation —For the purposes of this condition—

(a) "Government arm" means a fire arm or other weapon which is the property of the Government, and

(b) 'Government ammunition' means ammunition manufactured in any Govern

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licence

should it be necessary

quire at any time
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their production

Note 1 ---Any breach of the condition of this licence is punishable with imprisonment which may extend to Rs 500 or

any arms or ammunition covered than a person exempted under orthwith of the sale together with to the Magistrate of the district or to the officer in charge of the nearest police station Failure to give notice as required above is punishable with imprisonment for a term which may extend to three years or with fine or with both

FORM XVIIA
(See Rule 33)

FREE OF ALL FEE

Licence for the possession by a retailer of arms and ammunition and for going armed for the purpose of sport [protection] display

Serial number of licence	Name, description and residence of person exempted under Schedule I, 1 (a), nominating licensee	Name and residence of licensee	Name and residence of father of licensee	Arms or ammunition that licensee is entitled to possess		Extent of validity of licence i.e., throughout India, province or district	Date on which licence expires
				Brief description of each weapon with details, e.g., distinguishing marks register No etc	Quantity and description of each kind of ammunition		
1	2	3	4	5	6	7	8
							Or the date on which the person specified in column 2 ceases to be exempted under Schedule I 1(a), which ever is earlier

Seal

(Signature)

The of 19
Commissioner of Police
Deputy Commissioner
Assistant Commissioner
District Magistrate of the district
Subdivisional Magistrate of the district

Conditions

- 1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924
- 2 It covers only the person named in column 3 of this licence and the arms and ammunition described in columns 5 and 6
- 3 This licence is valid to the extent specified in column 7 subject in the case of a licence having effect outside the province in which it is granted or renewed to any restrictions which may be imposed by any general or special order of a Local Government in respect of the territories administered by it or subject to its control
- 4 This licence shall only be granted to a person nominated in that behalf and certified to be his own retainer by a person exempted under article 1 (a) of Schedule I to these

assemblage

- 7 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence
- 8 He shall not possess Government arms and ammunition
Explanation -- For the purposes of this condition--
(a) Government arm means a fire arm or other weapon which is the property of the Government and
(b) Government ammunition means ammunition manufactured in any Government factory or prepared for and supplied to Government
- 9 Condition 8 may be cancelled by the authority granting the licence if empowered to do so by the Local Government and an endorsement added showing the Government arms and ammunition which the licensee is authorised to possess
- 10 Where the licence is granted for the purpose of sport the licensee shall observe such close season as may be prescribed by the Local Government in respect of the game

authority in case of any such change whether permanent or temporary he may at his

ble with imprisonment
may extend to Rs 500 or

ammunition covered
a person exempted under
a notice forthwith of the sale together with
the district
required a

fine or with both

(a) 'Government arm' means a fire arm or other weapon which is the property of the Government and

(b) Government ammunition means ammunition manufactured in any Govern

if empowered to the Government

by retainer by the Local

authority who granted him the licence or in the event of the licence being renewed by some other authority on a previous occasion of change of permanent residence then to such authority In case of any change of residence whether permanent or temporary he may at his option apply to the nearest licensing authority for renewal of this licence should it be necessary

require at any time which it has been their production

Note 1—Any breach of the condition of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

Note 2—Licensees are warned that in case they sell any arms or ammunition covered by licences possessed by them to any person (other than a person exempted under Section 27 of the Act) he shall be liable to give notice as required by the Magistrate of the district to give notice as required extend to three years or

FORM XVIA
(See Rule 33)

FREE OF ALL FEE

Licensee for the possession by a retainer of arms and ammunition and for going armed for the purpose of sport [protection] display

Serial number of licence	Name description and residence of person exempted under Schedule I 1 (a) nominating licensee	Name and residence of licensee	Name and residence of father of licensee	Arms or ammunition that licensee is entitled to possess		Extent of validity of licence i.e. throughout India or province or district	Date on which licence expires
				Brief description of each weapon with details of distinguishing marks register No etc	Quantity and description of each kind of ammunition		
1	2	3	4	5	6	7	8
							Or the date on which the person specified in column 2 ceases to be exempted under Schedule I 1(a) which ever is earlier

Seal

(Signature)

The _____ of _____ 19____
 Commissioner of Police _____
 Deputy Commissioner _____
 Assistant Commissioner _____
 District Magistrate of the _____ district
 Subdivisional Magistrate of the _____ district

— — — — —
 Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2 It covers only the person named in column 3 of this licence and the arms and ammunition described in columns 5 and 6

3 This licence is valid to the extent specified in column 7 subject in the case of a licence having effect outside the province in which it is granted or renewed to any restrictions which may be imposed by any general or special order of a Local Government in respect of the territories administered by it or subject to its control

4 This licence shall only be granted to a person nominated in that behalf and certified to be his own retainer by a person exempted under article 1 (a) of Schedule I to these Rules and ammunition specified in this

any period not exceeding one
 which the person specified in

assemblage

7 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

8 He shall not possess Government arms and ammunition

Explanation—For the purposes of this condition—

(a) Government arm means a fire arm or other weapon which is the property of the Government and

(b) Government ammunition means ammunition manufactured in any Government factory or prepared for and supplied to Government

9 Condition 8 may be cancelled by the authority granting the licence if empowered to do so by the Local Government and an endorsement added showing the Government

the licensee shall observe
 in respect of the game-

option apply to the nearest licensing authority for renewal of this licence should it be necessary

12 The authority granting or renewing the licence has the right to inquire at any time

FORM XVII

(See Rule 34)

FEE FOR EACH WEAPON—ONE RUPEE

Temporary licence for the possession of arms and going armed during the period occupied in journeying from the port or other place of arrival in British India to place of destination

Name and description of licence	Arms or ammunition that licensee is entitled to possess		Place of destination	Period for which the licence is valid
	Brief description of each weapon	Quantity and description of each kind of ammunition		
1	2	3	4	5

The of 19

The of

19

(Sd)

Commissioner of Police

District Magistrate district

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2 It covers only the persons named and the arms and ammunition described therein

3 The licensee shall not unless specially empowered in this behalf by the authority

Government and

erty of

(b) Government ammunition means ammunition manufactured in any Government factory or prepared for and supplied to the Government

Ind or Berar forthwith apply to the nearest licensing authority for a licence in Form XIV or Form XVI in respect of the arms and ammunition described herein and shall at the same time deliver this licence in original to that authority

Note 1—Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

Note 2—Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under section 27 of the Act) the particulars or to the off above is pt fine or with both

FORM XVIII

(See Rule 35)

FREE OF ALL FEE

Licence for the possession of arms and ammunition and for going armed for the destruction of wild animals which do injury to human beings or cattle

Name, description and residence of licensee	Arms and ammunition Brief description of each weapon with details, of registered No and other distinguishing marks	Quantity and description of each kind of ammunition	Place or area for which the licence is granted	Specification of the wild beasts which may be destroyed under this licence	Period for which the licence is valid unless expressly ceasing to be in force under the provisions of sub rule (1) of rule 42	Place and residence of licensee and residence of the person to whom the licence and weapon are to be shown between 5th November and 31st December	In which the licence is to be produced for inspection before the licensing authority under sub rule 42.
1	2	3	4	5	6	7	8

shall cease to be in force

† *Note*—A licence in this form may be granted for any period not exceeding three years

(Signature)

The of 19 .

District Magistrate of the
Sub divisional Magistrate

district
district

Conditions.

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules, 1924

2 Once every year, between the 15th November and the 31st December, the licensee shall produce this licence and every weapon covered thereby before the Magistrate referred to in column 7

3 He shall not go armed with any arms covered by this licence otherwise than in good faith for the destruction of wild animals which do injury to human beings or cattle, nor shall he take any such arms to a fair, religious procession or other public assemblage, or to any considerable distance beyond the place or area entered in column 4

4 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

5 He shall not keep Government arms or ammunition

Explanation—For the purposes of this condition—

(a) 'Government arms' means a fire arm or other weapon which is the property of the Government, and

(b) 'Government ammunition' means ammunition manufactured in any Government factory, or prepared for and supplied to Government

6 Condition 5 may be cancelled by the authority granting the licence if empowered to do so by the Local Government and an endorsement added showing the Government arms and ammunition which the licensee is entitled to possess

7 The licensee shall not purchase rifle, revolver or pistol ammunition or in Assam ammunition of any kind in excess of the maximum which may from time to time be fixed by the Local Government

(a) the name description and residence of the person who takes delivery of the articles purchased,

(b) the nature and quantity of the articles purchased and

(c) the date of purchase,

and if the arms are purchased from any person other than a licensed dealer shall also cause the particulars specified in clauses (b) and (c) to be furnished in writing, to the authority who granted this licence within such period as may be prescribed for this purpose by such authority

9 Without prejudice to the voidance of this licence for breach of any of the foregoing conditions, it shall be void if—

(a) the licensee dies, or

(b) any weapon covered thereby—

(i) is sold, or

(ii) is attached in execution of a decree

10 The authority granting or renewing the licence has the right to inquire at any time during the currency of the licence whether any weapon for which it has been granted is still in the possession of the licensee and to require the production of the weapon for the purposes of such inquiry

Note 1—Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

FORM XIX
(See Rule 36)

FREE OF ALL FEE

Licence for the possession of arms and ammunition and for going armed for the destruction of wild animals doing injury to crops or cattle

Name, description and residence of licensee	Name and description of any member of the licensee's family or servant employed to watch crops or cattle residing with him by whom the arms covered by this licence may be also used	Arms and ammunition	Quantity and description of each kind of ammunition	Place or area within which the licence is valid	† Period for which the licence is valid unless previously ceasing to be in force under the proviso* to sub rule (1) of rule 42	Date on which the licence or the arms or both shall be produced for inspection before the licensing authority under sub rule (1) of rule 42
1	2	3				

† Note—A licence in this Form may be granted for any period not exceeding three years

* Provided that where a licence is granted in Form XIX for the possession of arms to be acquired by him, in granting the licence specified by him in the licence covered by the licence produced for his inspection, he fails to acquire the arms, the licence shall cease to be in force.

District Magistrate of the _____ district
Subdivisional Magistrate _____ district

The _____ of 19____

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act 1878 and of the Indian Arms Rules 1924

2 The licensee shall not go armed with any arms covered by this licence other than in good faith for the destruction or driving away of wild animals which do injury to the crops or cattle situated in the area specified in the licence

3 He shall not use any arms covered by this licence otherwise than in the place or area in which the licence is valid

4 He shall not lend any arms or ammunition covered by this licence to any person other than a member of his family or servant who may be employed by him to protect the crops or cattle situated in the area specified in the licence and who is mentioned in column 2 of the licence

5 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

6 The licensee shall not keep Government arms or ammunition

Explanation—For the purposes of this condition—

(a) Government arms means a fire arm or other weapon which is the property of the Government and

(b) Government ammunition means ammunition manufactured in any Government factory or prepared for and supplied to Government

7 Condition 6 may be cancelled by the authority granting the licence if empowered to do so by the Local Government and an endorsement added showing the Government arms and ammunition which the licensee is entitled to possess

8 The licensee shall not purchase rifle, revolver or pistol ammunition or in Assam ammunition of any kind in excess of the maximum which may from time to time be fixed by the Local Government

9 This licence shall be void if the licensee commits a breach of any of the above conditions or if the licensee dies or if any weapon covered thereby—

(i) is sold,

purposes of such inquiry

the licence has the right to enquire at any
any weapon for which it has been granted
enquire production of the weapon for the

extend to Rs 500 or

Note 2—Licensees are warned that in case they sell any arms or ammunition

required above is punishable
years or with fine or with both

FORM XX

(See Rule 37)

FEES—

(i) when granted under Rule 37 (1) (a) and (b)—FOUR ANNAS for each weapon

(ii) when granted under Rule 37 (1) (c)—FREE OF ALL FEE

Exception—A fee of TEN RUPEES is charged for a licence in this form in respect
of a pistol or a revolver in all provinces other than the North West Frontier Province

License for going armed on a journey in or through any Province

Name description and residence of licensee and agent (if any)	Arms or ammunition that licensee is entitled to carry		Retainers (if any) covered by the licence			Arms or ammunition that retainer is entitled to carry		Place of departure and place of destination	Period for which the journey is likely to occupy	Period for which the licence is valid
	Brief description of each weapon with details of registered No and other distinguishing marks	Quantity and description of each kind of ammunition	Name of retainer	Name of retainer's father	Address of retainer	Description	Quantity			
1	2	3	4	5	6	7	8	9	10	11
										From the— to 19

Seal

(Signature)

Commissioner of Police
District Magistrate of the
Subdivisional Magistrate
Political Officer for the
19

district
district
State

The of

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878, and of the Indian Arms Rules 1921

2 It covers only the persons named and the arms and ammunition described therein and such retainers (if any) as may be entered in column 4

3 The licensee or any retainer acting under this licence shall not unless specially empowered in this behalf by the authority granting the licence go armed to a fair

Government and

(b) Government ammunition* means ammunition manufactured in any Government factory or prepared for and supplied to the Government

5 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

Note 1 —Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

Note 2 —Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under sale together with rate of the district notice as required three years or with

fine or with both

HOME DEPARTMENT

NOTIFICATION

POLICE

Dated the 3rd November, 1903

No F 829 H 23 —In exercise of the powers conferred by section 35 of the Court Fees Act 1870 (VII of 1870) the Governor General in Council is pleased—

(1) to remit all fees payable under Schedule II of the said Act upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules 1924 in respect of which a fee is payable under those Rules and

(2) to reduce to one anna all fees exceeding one anna payable under the said Schedule upon other applications relating to licences or duplicates granted or renewed under the said Rules

C W GWYNNE

Joint Secretary to the Government of India

(ii) is attached in execution of a decree

10 The authority granting or renewing the licence has the right to enquire at any time during the currency of the licence whether any weapon for which it has been granted is still in the possession of the licensee and to require production of the weapon for the purposes of such inquiry

Note 1—Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

Note 2—Licensees are warned that in case they sell any arms or ammunition
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years or with fine or with both

FORM X\

(See Rule 37)

FEES—

(i) when granted under Rule 37 (1) (a) and (b)—FOUR ANNAS for each weapon

(ii) when granted under Rule 37 (1) (c)—FREE OF ALL FEE

Exception—A fee of TEN RUPEES is charged for a licence in this form in respect of a pistol or a revolver in all provinces other than the North West Frontier Province
Licence for going armed on a journey in or through any Province

Name description and residence of licensee and agent (if any)		Arms or ammunition that licensee is entitled to carry		Retainers (if any) covered by the licence				Place of departure route and place of destination	Period for which the journey is likely to occupy	Period for which the licence is valid	
1	2	3	4	5	6	Arms or ammunition that retainer is entitled to carry				9	10
	Brief description of each weapon with details of registered No and other distinguishing marks	Quantity and description of each kind of ammunition	Name of retainer	Name of retainer's father	Address of retainer	Description	Quantity			From the— to 19	

Seal

(Signature)

The

of

Commissioner of Police
District Magistrate of the
Subdivisional Magistrate
Political Officer for the
19

district
district
State

Conditions

1 This licence is granted subject to all the provisions of the Indian Arms Act, 1878 and of the Indian Arms Rules 1924

2 It covers only the persons named, and the arms and ammunition described therein and such retainers (if any) as may be entered in column 4

3 The licensee or holder of the licence

Government, and

(b) "Government ammunition" means ammunition manufactured in any Government factory, or prepared for and supplied to the Government

5 He shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the licence

Note 1 —Any breach of the conditions of this licence is punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs 500 or with both (Section 21 of the Indian Arms Act 1878)

Note 2 —Licensees are warned that in case they sell any arms or ammunition covered by the licences possessed by them to any person (other than a person exempted under the Act) the sale together with rate of the district notice as required three years or with

HOME DEPARTMENT

NOTIFICATION.

POLICE.

Delhi, the 3rd. November, 1923.

No F 829-II-23 —In exercise of the powers conferred by section 35 of the Court Fees Act, 1870 (VII of 1870), the Governor General in Council is pleased—

(1) to remit all fees payable under Schedule II of the said Act upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1921, in respect of which a fee is payable under those Rules and

(2) to reduce to one anna all fees exceeding one anna payable under the said Schedule upon other applications relating to licences or duplicates granted or renewed under the said Rules.

C W. GWYNNE.

Joint Secretary to the Government of India.

THE INDIAN ARMY ACT, 1911

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THE "INDIAN"* ARMY ACT, 1911 †

ACT NO VIII OF 1911

An Act to consolidate and amend the Law relating to the Government of His Majesty's Indian Forces

Received the assent of the Governor General on the 16th March, 1911

[WHEREAS it is expedient to consolidate and amend the law relating to the government of the "Indian commissioned officers, Viceroy's commissioned officers, † soldiers and other persons in His Majesty's Indian Forces, it is hereby enacted as follows —]§

1911
 1911
 1911

1937)

§
 of 1937)

1911 4. 1911 (vide G. O. Order

CHAPTER I

PRELIMINARY

Short title and commence ment 1 (1) This Act may be called the Indian Army Act, 1911

(2) It shall come into force on such date as the [Central Government]* may, by notification in the [official Gazette] † direct in this behalf ‡

Application of Act

Persons subject to Act §2 (1) The following persons shall be subject to this Act, namely —

(a) 'Indian commissioned officers, Viceroy's commissioned officers'§ and warrant officers

'Provided that a person holding a commission in the Army in Indian Reserve of officers shall be so subject only when ordered on any duty or service for which he is liable as a member of such reserve force'

(b) persons enrolled under this Act ,

(c) persons not otherwise subject to military law, who, on active service, in camp on the march, or at any frontier post specified by the 'Central Government' * by notification in this behalf, are employed by, or are in the service of or are followers of, or accompany any portion of, His Majesty's Forces **

(2) Every person subject to this Act under sub-section (1), clause (a) or (b) shall remain so subject until duly "retired discharged cashiered removed or dismissed from the service" ‡

"Provided that an officer of the Indian Land Forces retired therefrom and appointed to the Indian Regular Reserve of officers shall again become so subject when ordered on any duty or service for which he is liable as a member of such reserve force" §

* The words Central Government have been substituted for the words Governor

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who on active service in camp

he Governor by notification in this

behalf are employed by or are in the service of or are followers of or accompany any

portion of His Majesty's Forces

(2) Every person subject to this Act under sub-section (1) clause (a) or (b) shall

be retired discharged cashiered removed or dismissed from

1937

Act VI of 1918 have been omitted

Notes—When Indian commissioned officers retire they are liable under certain conditions to join the Indian Army Act: no provision in the Indian Army Act is made for officers who defect to the Reserve. This is taken to ensure that such officers are not employed on any duty or service. *Statement of Objects and Reasons* An Army Assistant Surgeon is a warrant officer and his pay is not attachable even when appointed in India 89 Ind Cas 882-48A 73 So also the pay of a staff surgeon 35 Bom L R 112, see also A I R 1933 All 158

3. (1) The "Central Government" * may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1) clause (c), shall be so subject as "Indian commissioned officers, Viceroy's commissioned officers" † warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person, and to cancel such direction

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers, shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer

4 Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and, if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed

5 (1) The "Central Government" * may, by notification, apply all or any of the provisions of this Act to any force raised and maintained in [India] † under the authority of the "Central Government" *

(2) While any of the provisions of this Act apply to any such force, the "Central Government" * may, by notification direct by what authority of these provisions incident to the operation of these provisions performed in respect of that

have been substituted for the words "Governor by C I Order of 1937 But in British Burma (vide G B Order of 1937)

is substituted by Act 93 of 1934 In British commissioned officers Governor's commissioned

read the word Burma (vide G B Order

Burm
officer
of 1901

Officers to exercise powers in certain cases

*[6 (1) Whenever persons subject to this Act are serving—

(a) out of India under an officer not subject to the authority of the 'Central Government, † or

(b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the 'Central Government, † not less than a brigade, the 'Central Government † may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised]

† [6A (1) When an officer, warrant officer or non-commissioned officer of His Majesty's [Burma]§ Forces is a member of a body of those forces acting with or is attached to, any body of His Majesty's [Indian] || Forces under such conditions as may be prescribed then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall in relation to that body of His Majesty's [Indian] || Forces be treated and have all such powers as if he were an officer, warrant officer or non-commissioned officer as the case may be of His Majesty's [Indian] || Forces

(2) When an officer, warrant officer, non-commissioned officer or soldier of His Majesty's [Indian] || Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Burma Forces Under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers, warrant officers and non-commissioned officers of that body of His Majesty's [Burma]§ Forces shall in relation to him be treated and have all such powers as if they were officers warrant officers or non-commissioned officers of His Majesty's [Indian] || Forces

*(3) In this sub-section 'prescribed means prescribed by the 'Central Government and the Governor of Burma, and for the purposes of this section, the relative rank of officers warrant officers and non-commissioned officers of His Majesty's Indian Forces and His Majesty's Burma Forces may be determined by regulations made by the Central Government and the Governor of Burma"

* Section 6 has been substituted by Act 11 of 1918

Governor for the

and in

British Burma by G. B. Order of 1937 respectively

§ In British India for the word 'Burma read Indian (vide G. I. Order of 1937)

|| In British Burma for the word 'Indian read the word 'Burma (vide G. B. Order of 1937)

Definitions.

Definitions

7 In this Act, unless there is something repugnant in the subject or context,—

(1) "British officer" means a person holding a commission in His Majesty's Land Forces, or in the Royal Marines or in the Territorial Army, "and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Naval Forces or Royal Air Forces" *

"(2) "Indian commissioned officer" means a person commissioned, gazetted or in pay as an officer holding His Majesty's commission in the Indian Land Forces, and includes in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Air Force

[(2A) "Viceroy's commissioned officer" means a person commissioned, gazetted or in pay as a Viceroy's commissioned officer in the Indian Army]†

(3) "warrant officer" means a person appointed, gazetted or in pay as an [Indian]‡ warrant officer in His Majesty's [Indian]‡ Forces :

(4) "non commissioned officer" means a person attested under this Act holding [an Indian] § non-commissioned rank in His Majesty's [Indian]‡ Forces, and includes an acting non-commissioned officer

"(5) "officer" means an officer of any of His Majesty's Military Forces and includes in relation to a person subject to this Act when serving under such condition as may be prescribed, an officer of any of His Majesty's Naval or Air Forces, but does not include a warrant officer, petty officer or non-commissioned officer ' ‖

(6) "commanding officer," when used in any provisions of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer "or Indian commissioned officer" ¶ whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer : and, as regards a person placed under the orders, "an officer, warrant officer petty officer or non-commissioned officer of any of His Majesty's Naval, Military or Air Forces" *

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"(8) 'army', 'army corps', 'division' and 'brigade' mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the 'Central Government' † or, when on active service, an army, army corps, division or brigade under the command of an officer holding a command in His Majesty's Land Forces ‡ 'or His Majesty's Indian Forces' §

(9) 'corps' means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act

¶(10) "independent brigade" means a brigade which does not form part of a division.

(11) "department" includes any division or branch of a department.

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act

(13) "active service", as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the time of march to, a country or place wholly or partly occupied by an enemy or is in military occupation of any foreign country

(14) 'military custody' means the arrest or confinement of a person according to the usages of the service "and includes air force custody" §

(15) 'military reward' includes any gratuity or annuity for long service or good conduct, any good conduct of pay, good service pay or pension, and any other military pecuniary reward

(16) "court-martial" means a court-martial held under this Act :

¶(17) "criminal court" means a Court of ordinary criminal justice in British India, or established elsewhere by the authority of the Central Government or the Crown Representative :

(18) 'civil offence' means an offence which, if committed in "British India" **, would be triable by a criminal court

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined.

(20) 'notification' means notification prescribed in the *Gazette of India*

(21) "prescribed" means prescribed by rules made under this Act, and

" " " " " and defined in the Indian Code shall be deemed to have by that Code

* Inserted by Act 23 of 1934 But the sub section 8 has been omitted in Burma by G B Order of 1937

† The words 'Central Government' have been substituted in British India by G I Order of 1937

Definitions

Definitions

7 In this Act, unless there is some thing repugnant in the subject or context—

(1) 'British officer means a person holding a commission in His Majesty's Land Forces, or in the Royal Marines or in the Territorial Army and includes in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Naval Forces or Royal Air Forces' *

(2) Indian commissioned officer means a person commissioned gazetted or in pay as an officer holding His Majesty's commission in the Indian Land Forces and includes in relation to a person subject to this Act when serving under such conditions as may be prescribed a person holding a commission in the Indian Air Force

[(2A) "Viceroy's commissioned officer means a person commissioned, gazetted or in pay as a Viceroy's commissioned officer in the Indian Army]†

(3) warrant officer means a person appointed gazetted or in pay as an [Indian]‡ warrant officer in His Majesty's [Indian]‡ Forces *

(4) non commissioned officer means a person attested under this Act holding [an Indian] § non commissioned rank in His Majesty's [Indian]‡ Forces and includes an acting non commissioned officer

(5) officer means an officer of any of His Majesty's Military Forces and includes in relation to a person subject to this Act when serving under such condition as may be prescribed, an officer of any of His Majesty's Naval or Air Forces but does not include a warrant officer petty officer or non commissioned officer

(6) 'commanding officer,' when used in any provisions of this Act with reference to any separate portion of His Majesty's forces or to any department, means the British officer or Indian commissioned officer * whose duty it is under the regulations of the army or in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision

(7) superior officer when used in relation to a person subject to this Act includes a warrant officer and a non commissioned officer and, as regards a person placed under the orders 'an officer, warrant officer petty officer or non commissioned officer of any of His Majesty's Naval Military or Air Forces *

* Substituted by Act 33 of 1934

† In British Burma for sub-section 2A read the following

(2) "

pay as
(2B)

“(8) ‘army’, ‘army corps’, ‘division’ and ‘brigade’ mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the “Central Government” † or, when on active service, an army, army corps, division or brigade under the command of an officer holding a command in His Majesty’s Land Forces ‡ “or His Majesty’s Indian Forces” §.

(9) “corps” means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act

(10) “independent brigade” means a brigade which does not form part of a division.

(11) “department” includes any division or branch of a department.

(12) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act

(13) “active service”, as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the time of march to, a country or place wholly or partly occupied by an enemy or is in military occupation of any foreign country

(14) ‘military custody’ means the arrest or confinement of a person according to the usages of the service “and includes air force custody”. §

(15) ‘military reward’ includes any gratuity or annuity for long service or good conduct, any good conduct of pay, good service pay or pension, and any other military pecuniary reward.

(16) “court-martial” means a court-martial held under this Act :

“(17) “criminal court” means a Court of ordinary criminal justice in British India, or established elsewhere by the authority of the Central Government or the Crown Representative : ”

(18) ‘civil offence’ means an offence which, if committed in “British India” **, would be triable by a criminal court.

(19) “offence” means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined

(20) “notification” means notification prescribed in the *Gazette of India*.

(21) “prescribed” means prescribed by rules made under this Act, and

(22) all words and expressions used herein and defined in the Indian Penal Code ††, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code

* Inserted by Act 33 of 1931 But the sub section 8 has been omitted in Burma by G. B Order of 1937

† The words “Central Government” have been substituted in British India by G. I Order of 1937

CHAPTER II

ENROLMENT AND ATTESTATION.

Enrolment

8 Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence the conditions of the service for which he is to be enrolled, and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question, he will be liable to punishment under this Act, record or cause to be recorded, his answer to each such question

9 If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign 'and shall also cause the person to sign' * the enrolment paper, and the person shall then be deemed to be enrolled

10 Every person who has for the space of six months, been in the receipt of military pay "as an enrolled person"† and been borne on the rolls of any corps or department‡ shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enrolment

Attestation

11 The following persons shall be attested namely —

- (a) all persons enrolled as combatants,
- (b) all other enrolled persons prescribed by the "Central Government." §

12 (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve

* The words within quotations have been added by Act 11 of 1918

† Inserted by Act 83 of 1934

‡ Certain words after this repealed by Act 11 of 1918 have been omitted

§ The words "Central Government" have been substituted in British India by the Order of 1937. But in British Burma read the word "Governor" (vide G. B. Order of 1938)

in His Majesty's [Indian]* Forces, and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation

CHAPTER III

DISMISSAL AND DISCHARGE

Dismissal by Central Government † and Commander in Chief in India

†13 (1) The "Central Government" ‡ § may dismiss from the service any person subject to this Act

|| (2) The Commander-in-Chief in India may dismiss from the service any person subject to this Act other than an Indian commissioned officer "

14 [An officer commanding an army, 'army corps', ¶ division or brigade], ** or any prescribed officer, may dismiss from the service any person serving under his command other than an officer

Dismissal by officer commanding army division brigade etc

15 [*Dismissal of convicts*] (*Repealed by Act 11 of 1918*)

16 The prescribed authority may in conformity with any rules prescribed in this behalf discharge from the service any person subject to this Act

Discharge

17 Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

Certificate to person dismissed or discharged

- (a) the authority dismissing or discharging him,
- (b) the cause of his dismissal or discharge,
- (c) the full period of his service in the army

18 (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to

Discharge etc out of India

* In British Burma read the word 'Burma' for 'Indian'

† Section 13 has been numbered as sub section (1) of section 13 by Act 33 of 1934

‡ The words 'Central Government' have been substituted by G.O. Order of 1937 of 1937)

Burma by G.O.

* The words within quotations have been added by Act 11 of 1918

** For the words within brackets in British Burma substitute the following words: the General Officer commanding the Force

be discharged, is serving out of [India,]* and requests to be sent to [India,]* shall, before being discharged, be sent to India with all convenient speed

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

†“Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or in the case of a sentence of transportation or imprisonment, a portion of such other payment, may be inflicted before he is sent to India.” †

CHAPTER IV

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT MARTIAL

19 (1) [The Commander-in-Chief in India, an officer commanding an army, “army corps,”† division or brigade,]§ Reduction of non commissioned officers or any prescribed officer, may reduce to a lower grade, or to the ranks, “any warrant officer, or”|| any non commissioned officer under his command :

“Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks of a sepoy” †

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

20 (1) [The Commander-in-Chief in India may, subject to the Minor punishments control of the “Central Government” ¶]** specify the minor punishments to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) “Imprisonment in military custody and in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments” †† provided that—

(a) the term of such imprisonment “or field punishment” †† shall not exceed twenty-eight days, and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company, or other similar unit is lost or Collective fines

* In British Burma for the word “India” substitute the word “Burma” (vide G. B Order of 1937).

¶ Inserted by G. I. Order of 1937

** In British Burma for the words within brackets substitute “the Governor may” (vide G. B Order of 1937)

†† The words within quotations have been substituted by Act 37 of 1920

‡‡ The words within quotations have been added by Act 37 of 1920

stolen, [the officer commanding the army, 'army corps, * division or independent brigade to which such unit belongs]† may, after obtaining the report of a court of inquiry, impose a collective fine upon the ['Viceroy's]‡ commissioned officers, warrant officers,§ non commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft

22 (1) For any offence, in breach of good order the commanding officer of any corps or detachment on active service in camp, on the march, or at any frontier post specified by the "Central Government" || by notification in this behalf at which troops are stationed, may punish any [Indian]¶ follower of such corps or detachment who is subject to this Act under section 2, sub section (1) clause (c) —

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven days, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail as ordered by the said commanding officer and the officer in charge of any jail shall on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant or until he is discharged by due course of law

Provost Marshals

23 For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the [Commander-in-Chief in India or an officer commanding an army, 'army corps, * division or independent brigade]† or an officer commanding the forces in the field, and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service

24 (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description to preserve good order and discipline and to prevent breaches of the same by persons belonging or attached to the army He may at any time arrest and

Order of 1937)

§ Substituted by Act 33 of 1931
 † The words "Central Government" have been substituted in British India by C
 Order of 1937 But in British Burma for these words read the word "Governor" (1
 G B Order of 1937)

* In British Burma the word "Indian" has been omitted

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words the Central

ernor s (vide C B

detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial'*

'(2) A provost marshal may punish with any punishment mentioned in section 22, sub-section (1), clause (b), any follower who is subject to this Act under section 2, sub-section (1), clause (c) and is a menial servant and who on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline'*

CHAPTER V

OFFENCES

Offences in respect of Military Service

Offences punishable with death **25** Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortrees, post or guard committed to his charge, or which it is his duty to defend or

(b) in presence of an enemy, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice, or

(c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer, or

(d) treacherously makes known the watchword to any person not entitled to receive it, or

(e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State, or

(f) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency, or

(g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave, or

(h) in time of action, leaves his commanding officer or his post or party to go in search of plunder, or

(i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave, or

(j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of His Majesty's forces, or forces a safeguard or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind, or

* The words within quotations have been added by Act 37 of 1920

(k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving , *

shall on conviction by court martial, be punished with death, or with such less punishment as is in this Act mentioned

Offences not punishable with death 26 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) strikes, or forces or attempts to force, any sentry , or

(b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment , or

(c) being a sentry, or on guard plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard , or

(d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave , shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Mutiny and Insubordination

Offences punishable with death 27 Any person subject to this Act who commits any of the following offences, that is to say —

(a) begins, excites, causes, ' or conspires with any other persons to cause * or joins in any mutiny or

(b) being present at any mutiny does not use his utmost endeavours to suppress the same , or

(c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer or

(d) uses or attempts to use criminal force to or commits an assault on his superior officer, whether on or off duty, knowing or having reason to believe him to be such , or

(e) disobeys the lawful command of his superior officer ; shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned

Offences not punishable with death 28 Any person subject to this Act who commits any of the following offences that is to say,—

(a) is grossly insubordinate or insolent to his superior officer in the execution of his office , or

(b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field , or

(c) impedes a provost-marshal or an assistant provost-marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the

* The words within quotation have been inserted by Act 11 of 1918.

provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;
shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Desertion
Harbouring deserter, absence without leave, etc

30 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) knowingly harbours any deserter, or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended, or

(b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person, or

(c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department, or

(d) absents himself without leave or without sufficient cause overstays leave granted to him, or

(e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or

(f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or

(g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or

(h) in time of peace, quits his guard, picquet or patrol without being regularly relieved or without leave ; or

(i) without proper authority is found two miles or upwards from camp, or

(j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat-beating ;
shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

Disgraceful conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instru

ments, equipments or military stores of any kind, the property of [the Crown]* entrusted to him, or

(b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted, or

(c) wilfully destroys or injures any property of [the Crown]* entrusted to him, or

(d) commits theft in respect of any property of the [Crown]* or of any military mess, band or institution or of any person subject to military law, or serving with, or attached to the army, or

(e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen, or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, or

(g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity, or

(h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person, or

(i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission,

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Intoxication

32 Any person subject to this Act who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Offences in relation to Persons in Custody

33 Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape, shall, on conviction by court-martial be punished with death, or with such less punishment as is in this Act mentioned

34 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command of a guard, picquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or

(b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape, or

* In British India the words the Crown have been substituted for the Government by G I Order of 1937 But in British Burma for the words the Government read the word Government

(c) being in military custody, leaves such custody before he is set at liberty by proper authority, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Offences in relation to Property

35 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion, or without proper authority exacts from any person, carriage portage or provisions, or

(b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property, or

(c) designedly or through neglect kills, injures, makes away with, ill-treats, or loses his horse or any animal used in the public service, or

(d) makes away with, or is concerned in making away with, his arms, ammunition equipments, instruments, tools, clothing or regimental necessaries, or

(e) loses by neglect anything mentioned in clause (d), or

(f) wilfully injures anything mentioned in clause (d) or any property belonging to 'the Crown,'* or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to the army or

(g) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by court martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Offences in relation to False Documents and Statements

36 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to military law, knowing such accusation to be false, or

(b) in making any complaint under section 117, 'or section 117A,'† knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact, or

(c) obtains or attempts to obtain for himself, or for any other person, any pension allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement, or

(d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in

* The words the Crown have been substituted for the word Government in British India by G I Order of 1937 But in British Burma for the words the Crown read the word Government

† Inserted by Act 33 of 1931

his charge, whether belonging to such men or to "the Crown,"* or to any person in or attached to the army, or who through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

37 Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

Offences in relation to Courts-martial

38 Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up, or

(b) intentionally offers any insult or causes any interruption or disturbance to or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting, or

(c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial be punished with imprisonment, or with such less punishment as is in this Act mentioned

Miscellaneous Military Offences

39 Any person subject to this Act who commits any of the following offences, that is to say—

(a) being an officer or warrant officer, behaves in a manner unbecoming his position and character, or

(b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position, or

(c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority, or

* The words 'the Crown' have been substituted for the word 'Government' in Br India by G I Order of 1937. But in British Burma for these words read the 'Government'

(d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ; or

(e) attempts to commit suicide and does any act towards the commission of such offence , or

(f) being below the rank of warrant officer, when off duty appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from any town or bazar carrying a sword, bludgeon or other offensive weapon , or

(g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service , or

(h) neglects to obey any general or garrison or other orders , or

(i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline ; shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned

***39A.** Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.

Attempts

Abetment

40 Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

Abetment

Civil Offences

†41 (1) Every person subject to this Act who "either within [British India]† or § at any place beyond [British India]‡, commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged there-with under this section shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say —

Civil offences committed outside British India or on active service in [British India] ‡

(a) if the offence is one which would be punishable under the law of [British India]† with death or with transportation, he shall be liable to suffer any punishment 'other than whipping'§ assigned for the offence by the law of [British India]‡, and

* Section 39A has been added by Act 11 of 1918

by Act 33 of 1934
read the words 'British Burma'

have here been omitted
Act 37 of 1920

(b) in other cases, he shall be liable to suffer any punishment "other than whipping"* assigned for the offence by the law of [British India,]† or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline :

"Provided that a person subject to this Act who at any place within [British India,]† or any place, other than such frontier posts as may be specified by the 'Central Government‡' by notification in this behalf, "in which the Central Government or the Crown Representative exercises jurisdiction by virtue of the Government of India Act, 1935, or of any order in Council made under the Foreign Jurisdiction Act, 1890,'§ and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law, or the offence of rape, shall not be deemed to be guilty of an offence of military law and shall not be tried by a court-martial' ||

"(2) The powers of a court-martial to try and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also a military offence" ||

42 [Certain civil offences triable by military law] (Repealed by Act 33 of 1934)

CHAPTER VI.

PUNISHMENTS

43 Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following that is to say —

- (a) death ,
- (b) transportation for life or for any period not less than seven years ,
- (c) imprisonment "either rigorous or simple"¶ for any term not exceeding fourteen years ,
- "(cc) in the case of [Indian]** commissioned officers, cashiering ,""||
- (d) dismissal from the service ,
- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for "a period not exceeding two months ,††

Is ' British Burma '

General in Council in British India by G. I. Order of 1937 But in British Burma for 10 words "Governor

, I. Order
Governor by
35 or any
1937).

"(f) reduction, in the case of a warrant officer, to a lower grade or class or place in the tests of his rank or to the ranks, or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy, *

"(g) in the case of officers, warrant officers and non-commissioned officers, forfeiture in the prescribed manner of seniority of rank and service for the purpose of promotion, *

"(gg) in the case of "warrant officers and non-commissioned officers * reprimand or severe reprimand, †

(h) forfeitures and stoppages as follows, namely —

(i) forfeiture of service for the purpose of ‡ increased pay, pension or any other prescribed purpose,

(ii) ‡

(iii) forfeiture, in the case of a person sentenced to "cashiering § dismissal from the service || of all arrears of pay and allowances and other public money due to him at the time of such "cashiering § dismissal

(iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good

"(v) on active service forfeiture of pay and allowances for a period not exceeding three months" †

44 Where in respect of any offence under this Act there is

Lower punishments

specified a particular punishment or such less punishment as is in this Act mentioned there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment

"[45 Where any person, subject to this Act and under the rank of

Field punishment

warrant officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment, other than flogging, as may be prescribed as a field punishment Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb]

Position of corporal punishment in scale

46 'Field punishment' ‡ shall, for the purpose of commutation, be deemed to stand in the scale of punishments next

below dismissal

47 A sentence of court-martial may award, in addition to or

Combination of punishments

without any one other punishment, "the punishment specified in clause (cc) or clause (d) and any one or more of the punishments in clauses (f), (g), (gg) and (h) of section 43 §

* Substituted by Act 33 of 1931

† Inserted by Act 11 of 1918

‡ Omitted by Act 33 of 1934

§ Inserted by Act 33 of 1934

|| Certain words after this repealed by Act 11 of 1918 have been omitted

* Substituted by Act 37 of 1900

Cashiering of Indian commissioned officer on conviction

*[47A Whenever an [Indian]† commissioned officer is sentenced to transportation or imprisonment, the Court shall by its sentence sentence such officer to be cashiered]

48 Whenever any person is sentenced to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

(a) a time not exceeding one month if the term of imprisonment does not exceed six months,

(b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year,

(c) a time not exceeding three months if the term of imprisonment exceeds one year

Reduction of non-commissioned officers to ranks.

49 "A warrant officer or a non-commissioned officer"* sentenced by court-martial to transportation, imprisonment, "field punishment"‡ or dismissal from the service, shall be deemed to be reduced to the ranks

§[49A When "any enrolled person"* on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment].

Retention in the ranks of person convicted on active service

CHAPTER VII PENAL DEDUCTIONS

§ 50 (1) The following penal deductions may be made from the pay and allowances of an [Indian]† commissioned officer, that is to say,—

(a) all pay and allowances for every day of absence without leave, *unless a satisfactory explanation has been given through his commanding officer and has been approved by the "Central Government"* ¶

(b) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of such offence,

* Inserted by Act 33 of 1931

† In British Burma for the word "Indian" read the word "Burmese" (vide G. B. Order of 1937)

‡ The words within quotations have been substituted by Act 37 of 1920

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay,

(d) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the "Central Government" to have been occasioned by any wrongful act or negligence on the part of the [Indian]† commissioned officer,

(e) any sum ordered by a court-martial to be stopped under section 43

(2) The following penal deductions may be made from the pay and allowances of a person subject to this Act, "other than an [Indian]† commissioned officer,"‡ that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for any day of imprisonment awarded by a Criminal Court, a court-martial, or an officer exercising authority under section 20, "or of field punishment awarded by a court-martial or such officer" §

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment "or field punishment" § by an officer exercising authority under section 20;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him

"(cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by the order of the [Commander-in-Chief in India]" ¶

"(d) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited" **

Notes.—§ The words "or of field punishment awarded by a court-martial or such officer" are inserted by Act VI of 1900.

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† Inserted by Act 33 of 1934

§ The words with quotations have been inserted by Act 27 of 1900

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** Clause (d) of sub section (2) has been substituted by Act VII of 1935.

(e) any sum ordered by a court martial to be stopped under section 43,

(f) any sum required to make good such compensation for any expenses caused by him or for any loss or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessities or military decoration, or to any buildings or property, as may be awarded by his commanding officer,

(g) any sum required to pay a fine awarded by a Criminal Court, a court-martial exercising jurisdiction under section 41* or an officer exercising authority under section 20 or section 21.

Provided that the total deductions from the pay and allowances of a person subject to this Act 'other than an [Indian]† commissioned officer ‡ made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal)§ exceed in any one month one-half of his pay and allowances for this month

Explanation—For the purposes of clauses (a) and (b)—

(i) absence or custody for six consecutive hours or upwards whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day,

(ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody and

(iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person

51 Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same be deducted from any public money due to him other than a pension

Deductions from public money other than pay

52 Any deduction from pay and allowances authorised by this Act may be remitted in such manner, "and to such extent || and by such authority as may from time to time be prescribed

Remission of deductions

|| **52A** (1) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances

Provisions for dependents of prisoners of war

* Certain words after this repealed by Act VII of 1935 have been omitted
† In British Burma for the word Indian read the word Burma (vide G. B. Order of 1937)

‡ Inserted by Act 33 of 1934

§ Certain words after this repealed by Act 11 of 1918 have been omitted

|| The words within quotations and Section 52A have been inserted by Act 10 of 1917

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay,

(d) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the "Central Government" to have been occasioned by any wrongful act or negligence on the part of the [Indian]† commissioned officer,

(e) any sum ordered by a court-martial to be stopped under section 43

(2) The following penal deductions may be made from the pay and

Deductions from pay and allowances of a person subject to this Act, other than an [Indian]† commissioned officer, ‡ that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for any day of imprisonment awarded by a Criminal Court, a court-martial, or an officer exercising authority under section 20, "or of field punishment awarded by a court-martial or such officer" §

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment "or field punishment" § by an officer exercising authority under section 20,

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the ‖ medical officer attending on him ¶ to have been caused by an offence under this Act committed by him,

"(cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by the order of the [Commander-in-Chief in India]" ¶;

"(d) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited", **

Notes.—Section 50 of the Indian Army Act 1911 (VIII of 1911) purports to set out all the final deductions which may be made from the pay and allowances of a person subject to the Act but sub section (2) thereof makes no reference to the forfeiture of such pay as corps or working pay which can be awarded as a minor punishment by an officer exercising authority under section 20. † In British India the word "Indian" read the word "British India" (vide G. B. Order of 1937) and at the same time owing to the (31) is no longer

* The words 'Central Government' have been substituted for the words "Governor General in Council" in British India by G. I. Order of 1937. But in British Burma for these words read the word 'Governor' (vide G. B. Order of 1937)

† In British Burma for the word 'Indian' read the word "Burma" (vide G. B. Order of 1937)

‡ Inserted by Act 33 of 1934

§ The words "or of field punishment" are inserted by Act 33 of 1934

Order of 1937)

in British Burma
"or" (vide G. B.

** Clause (d) of sub section (2) has been substituted by Act VII of 1935.

(e) any sum ordered by a court martial to be stopped under section 43,

(f) any sum required to make good such compensation for any expenses caused by him or for any loss or damage or destruction done by him to any arms ammunition equipment, clothing instruments regimental necessaries or military decoration, or to any buildings or property, as may be awarded by his commanding officer,

(g) any sum required to pay a fine awarded by a Criminal Court, a court-martial exercising jurisdiction under section 41* or an officer exercising authority under section 20 or section 21

Provided that the total deductions from the pay and allowances of a person subject to this Act 'other than an [Indian]† commissioned officer ‡ made under clauses (e) to (g) both inclusive shall not (except in the case of a person sentenced to dismissal)§ exceed in any one month one half of his pay and allowances for this month

Explanation—For the purposes of clauses (a) and (b)—

(i) absence or custody for six consecutive hours or upwards whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day

(ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody and

(iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person

51 Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same be deducted from any public money due to him other than a pension

Deducted from public money other than pay

52 Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent || and by such authority as may from time to time be prescribed

Remission of deductions

|| **52A** (1) In the case of all persons subject to this Act being prisoners of war whose pay and allowances have been forfeited under section 50 but in respect of whom a remission has been made under section 52, it shall be lawful notwithstanding any provision in any enactment or any rule of law to the contrary for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such persons and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances

Provision for dependents of prisoners of war

* Certain words after this repealed by Act VII of 1935 have been omitted

† In British Burma for the word Indian read the word Burma (vide C. E. C. of 1937)

‡ Inserted by Act 83 of 1934

§ Certain words after this repealed by Act 11 of 1918 have been omitted

|| The words within quotations and Section 52A have been inserted by Act 17 of 1934

[(2) Any payments hitherto made to dependents by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated.]*

CHAPTER VIII

COURTS-MARTIAL.

Constitution and Dissolution of Courts-martial.

Courts-martial and the kinds thereof

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say :—

- (1) general courts-martial ;
- (2) district courts-martial ;
- (3) summary general courts-martial ; and
- (4) summary courts-martial.

Power to convene general courts-martial.

54. A general court-martial may be convened by the [Commander-in-Chief in India,]† or by any officer empowered in this behalf by warrant of the [Commander-in-Chief in India]†.

Power to convene district courts-martial.

55. A district Court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of warrant issued under section 54 or section 55.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

Composition of general courts-martial.

§57. A general court-martial shall consist of not less than five [British officers or Indian commissioned officers]† each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of Captain."

Composition of district courts-martial.

58. A district court-martial shall consist of not less than three ["British officers or Indian commissioned officers."§]†

59. [Convening order to state if larger number of officers is not available.] (Repealed by Act 33 of 1934.)

Composition of general, summary general or district courts-martial.

§[60. A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers.]]

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[(2) Any payments hitherto made to dependents by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated] *

CHAPTER VIII

COURTS-MARTIAL

Constitution and Dissolution of Courts martial

Courts martial and the kinds thereof

53 For the purposes of this Act there shall be four kinds of courts-martial, that is to say —

- (1) general courts martial,
- (2) district courts martial
- (3) summary general courts martial, and
- 4) summary courts-martial

Power to convene general courts martial

54 A general court-martial may be convened by the [Commander-in-Chief in India,][†] or by any officer empowered in this behalf by warrant of the [Commander-in Chief in India][†].

Power to convene district courts martial

55 A district Court-martial may be convened by any officer having power to convene a general court martial or by any officer empowered in this behalf by warrant of any such officer

Contents of warrant issued under section 54 or section 55

56 A warrant issued under section 54 or section 55 may contain such restrictions reservations or conditions as the officer issuing it may think fit

Composition of general courts martial

§ 57 A general court-martial shall consist of not less than five [British officers or Indian commissioned officers][†] each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of Captain

Composition of district courts martial

58 A district court-martial shall consist of not less than three [British officers or Indian commissioned officers][§][†]

59 [Convening order to state if larger number of officers is not available] (Repeated by Act 33 of 1934)

Composition of general summary general or district courts martial

§[60 A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers]||

61. (1) Any person subject to this Act who is under orders for trial by general or district court-martial may claim to be tried by British officers

(2) In all cases the right of making such a claim shall, before the Court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf and, when such a claim is made, the Court shall be constituted accordingly

Convening of summary general courts martial

62 The following authorities shall have power to convene a summary general court-martial, namely —

(a) an officer empowered in this behalf by an order of the [Governor-General in Council or of the Commander-in-Chief in India] * ,

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf ,

(c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial

Composition of summary general courts martial

63 A summary general court-martial shall consist of not less than three "British officers† or Indian commissioned officers ‡

Summary courts martial

64 (1) A summary court-martial may be held—

(a) by the commanding officer of any corps or department of His Majesty's [Indian] † Forces, or of any detachment of those forces ,

(b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached

(2) At every summary court-martial the officer holding the trial shall alone constitute the Court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed

65 (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved *

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court martial shall be dissolved

(3) Where a court-martial is dissolved under this section, the accused may be tried again

Jurisdiction of Courts-martial.

66 When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a Criminal Court, or has been summarily dealt

* In British Burma for the words within brackets read the word 'Governor' (vide G B Order of 1937)

† After the words 'British officers' in British Burma insert 'or Burma' (vide G B Order of 1937)

‡ Substituted by Act 33 of 1934

§ In British Burma for 'Indian' read 'Burma' (vide G B Order of 1937)

¶ Proviso after this has been omitted by Act 33 of 1934

with for an offence under section 20 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

*[67 No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enrolment)

shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question ["not being an (Indian)† commissioned officer"]‡ has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces

Explanation—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27]

68 Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Adjustment of the Jurisdiction of Courts-martial and Criminal Courts.

69 When a Criminal Court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which Court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody

Notes—A military court has concurrent jurisdiction as regards criminal breach of trust but exclusive jurisdiction as to desertion. The mere fact that an accused was arrested

be so subject A I R 1934 Lah 815

70 (1) When a Criminal Court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the prescribed military authority at its option either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the "Central Government" §

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the "Central Government". § whose order upon such reference shall be final

* Section 67 has been inserted by Act 37 of 1920

† In British Burma for the word 'Indian' read the word 'Burma' (vide G B Order of 1937)

‡ Inserted by Act 33 of 1934

§ The words 'Central Government' have been substituted for the words "Governor General in Council" in British India by G I Order of 1937. But in British Burma for these words read the word 'Governor' (vide G B Order of 1937).

71 (1) Notwithstanding anything contained in [section 26 of the General Clauses Act, 1897],*† or in section 403 of the Code of Criminal Procedure 1898,‡ a person convicted or acquitted by a court-martial may be afterwards tried by a Criminal Court for the same offence or on the same facts

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a Criminal Court for the same offence or on the same facts that Court shall, in awarding punishment have regard to the military punishment he may already have undergone

Powers of Courts martial

72 A general or summary general court martial shall have power to try any person subject to this Act for any offence made punishable therein and to pass any sentence authorized by this Act

73 A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death or transportation, or imprisonment for a term exceeding two years

‘Provided that a district court-martial shall not award to a warrant officer any punishment other than ‘the punishment specified in clauses (g), (gg) and (h) of section 43 or § either in addition to or in substitution for any such punishment, the punishment specified in clause (d) or the punishment specified in clause (f) of that section ||

74 A summary court-martial may try any offence punishable under any of the provisions of this Act

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial “or on active service a summary general court-martial”[†] for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences namely —

(a) any offence punishable under sections 25 27, clauses (a), (b) or (c), 33 “or 41 **or

(b) any offence against the officer holding the Court

75 A summary court-martial may try any person subject to this Act and under the command of the officer holding the Court, except an officer or warrant officer

* X of 1897

† In British Burma for the words within brackets read the words the Burma General Clauses Act (vide G B Order of 1937)

‡ V of 1898

§ The words within quotations have been substituted by Act V of 1935

|| Inserted by Act 33 of 1934

¶ The words within quotations have been inserted by Act 11 of 1918

** Substituted by Act 33 of 1931

76 (1) A summary court-martial* may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year *

Sentences awardable by summary court martial

Procedure at Trials by Court-martial

President

77. At every general, district or summary general court-martial the senior member shall sit as president

78 Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General in [India] † or, if no such officer is available a person appointed by the convening officer

Judge Advocate

79 [*Superintending Officer*] (Repealed by Act 33 of 1934)

80 (1) At all trials by general, district or summary general courts-martial as soon as the Court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the Court

Challenges

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall, in the absence of the challenged officer, decide on the objection

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the Court shall proceed with the trial

81 (1) Every decision of a court-martial shall be passed by an absolute majority of votes, and where there is a tie, the votes, as to either finding or sentence

Voting of members

(2) The president shall have a casting vote

82 An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate ‡ before the commencement of the trial

Oaths of president and members

83 Every person giving evidence at a court martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form

Oaths of witnesses

form

* Certain words after this repealed by Act 33 of 1934 have been omitted

† In British Burma for the word 'India' substitute the word 'Burma' (vide G. B. Order of 1937)

, Certain words after this repealed by Act 33 of 1934 have been omitted

84. (1) The convening officer, the president of the Court, the Judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance * at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps department or detachment to which he belongs, and such officer shall serve it upon him accordingly

(3) In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be or reside, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act 1872,† sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities

(6) If any document in such custody is in the opinion of any District Magistrate, [Chief Presidency Magistrate]‡, High Court or Court of Session, wanted for the purpose of any court-martial, such Magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court may direct

(7) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police wanted for any such purpose he may require the postal or telegraph authorities, as the case may be to cause search to be made for and to detain such document pending the orders of any such District Magistrate, [Chief Presidency Magistrate]‡ or Court

85 (1) Whenever, in the course of a trial by Court-martial it appears to the Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable such Court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness

[(3) When the witness resides in any Indian State or tribal area in which there is an officer representing the Central Government or

* Certain words after this repealed by Act 33 of 1934 have been omitted

† I of 1872

‡ In British Burma the words 'Chief Presidency Magistrate' have been omitted by G B Order of 1937

the Crown Representative, the commission may be issued to that officer"]*†

(4) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure 1898†

[(5) Where the commission is issued to such officer as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India]†

(6) When the witness resides out of [India],§ the commission may be issued to any British consular officer, British Magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the Court may think relevant to the issue, and the Magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories

(8) The prosecutor and the accused person may appear before such Magistrate or officer by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate General shall forward the same to the Court at whose instance the commission was issued or, if such Court has been dissolved, to any other Court convened for the trial of the accused person, and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission

[*Explanation*—In this section, the expression "Judge Advocate General" means the Judge Advocate General in India, and includes a Deputy Judge Advocate General]‡

* Sub section (3) has been substituted in British India by G. I. Order of 1937

† In British Burma sub sections (3) and (5) have been omitted by G. B. Order of 1937

‡ Act V of 1898

§ In British Burma for the word "India" read the words "British Burma" (vide G. B. Order of 1937)

|| In British Burma the explanation to the section 85 has been omitted by G. B. Order of 1937.

Conviction of one offence per-
missible on charge of another

86 (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being

absent without leave

(2) A person charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged

(4) A person charged before a court-martial with an offence punishable under section 41 * may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, † were applicable

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment

(6) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged †, ‡

87 No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the Court

Majority requisite to sentence
of death

Evidence before Courts martial

88 The Indian Evidence Act, 1872 § shall subject to the provisions of this Act, apply to all proceedings before a court-martial

General rules as to evidence

89 A court martial may take judicial notice of any matter within the general military knowledge of the members

Judicial notice

90 In any proceeding under this Act, any application, certificate, warrant reply or other document purporting to be signed by an officer in the "service of the Crown" shall on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed until the contrary is shown

Presumption as to signature

* Certain words after this repealed by Act 33 of 1931 have been omitted

† Act V of 1898

‡ The words within quotations have been inserted by Act 11 of 1918

§ Act I of 1872

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(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General

(10) On receipt of a commission and deposition returned under sub section (9), the Judge Advocate General shall forward the same to the Court at whose instance the commission was issued or, if such Court has been dissolved, to any other Court convened for the trial of the accused person, and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court.

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Presumption as to signature

* Certain words after this repealed by Act 33 of 1931 have been omitted

† Act V of 1898

91 Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having

Enrolment paper

given the answers to questions which he is therein represented as having given "The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper" *

***91A** (1) A letter, return or other document respecting the service

Presumption as to certain documents

of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the [Governor General in Council or the Commander-in-Chief in India]† or by any prescribed officer, shall be evidence of the facts stated in such letter return or other document

(2) An Army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps battalion or arm or branch of the service to which such officers or warrant officers belong

(3) Where a record is made in any regimental book, in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost marshal or other officer, or any portion of His Majesty's Forces a certificate purporting to be signed by such provost marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall

if this Act is being tried on a charge of absence without leave, and such person has

surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station, a certificate purporting to be signed by such police-officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated

† (7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government

upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act”

92 (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the “service of the Crown,”* or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer and adjourn until his reply is received

(2) The written reply of any officer so referred to, shall, if signed by him, be received in evidence and have the same effect as if made on oath before the Court

(3) If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial

93 (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of, any previous convictions and general character. Evidence of previous convictions and general character. of such person, either by a court-martial or by a Criminal Court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records, and it shall not be necessary† to give notice before trial to the person tried that evidence as to his previous convictions or character will be received

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

Confirmation and Revision of Findings and Sentences

94 No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act. Finding and sentence invalid without confirmation

95 The findings and sentences of general courts-martial may be confirmed by the [Commander-in-Chief in India],‡ or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India. Power to confirm finding and sentence of general court martial

* In British India the words within quotations have been substituted by G I Order of 1937. But in British Burma for the words within quotations read the words “civil servant”

of 1918 have been omitted
“Commander in Chief in India” read

96 The findings and sentences of district court-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer

Power to confirm finding and sentence of district court martial

Contents of warrant issued under section 95 or section 96

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

98 (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer "or if the convening officer so directs, by an authority superior to the convening officers"*

Confirmation of finding and sentence

(a) in the case of the trial of an officer,

(b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and

(c) in any other case if so ordered by the convening† officer

(2) Save as provided in sub section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith

99 Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial

Power of confirming officer to mitigate remit or commute sentences

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court

† **99A** When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation"

Confirmation of finding and sentence on board ship

100 (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming officer, and on such revision, the Court, if so directed by him, may take additional evidence

Revision of finding or sentence

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent

(3) In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with

* The words within quotations have been inserted by Act 11 of 1918

† Substituted by Act 11 of 1918

the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers

Finding and sentence of a summary court martial

101 The finding and sentence of a summary court martial shall not require to be confirmed, but may be carried out forthwith

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of [an officer commanding not less than a corps] *

102 The proceedings of every summary court martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer, and such officer, or [the Commander-in-Chief in India, or the officer commanding the army, 'or army corps,'† in which the trial was held]* may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the Court might have passed

103 Where a sentence passed by a court-martial which has been *Substitution of valid for invalid sentence,*

under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence

Provided that the punishment awarded by the sentence so passed shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the invalid sentence

103A † (1) Whenever, in the course of a trial by court-martial it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer

(2) A confirming officer to whom a case is reported under subsection (1) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged

(3) A prescribed officer to whom a case is reported under subsection (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody

* and † read the words 'the General officer of 1937).

in the prescribed manner, and shall report the case for the orders of the "Central Government."*

(4) On receipt of a report under sub-section (3), the "Central Government"* may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898,†

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a Criminal Court.

‡[(5A) Where any person is in custody under sub-section (3), or under detention under sub-section (4),—

(a) if such person is in custody under sub-section (3), on the report of a medical officer, or

(b) if such person is detained under sub-section (4), or a certificate from any of the authorities empowered to grant a certificate under section 473 of the Code of Criminal Procedure, 1898,† that, in the judgment of such officer or authority, such person may be released without danger of his doing injury to himself or to any other person, the Governor General in Council may thereupon order such person to be released, or to be detained in custody, or to be transferred, to a public lunatic asylum if he has not been already sent to such an asylum.

‡ (5B) Where any relative or friend of any person who is in custody under sub-section (3), or under detention under sub-section (4), desires that he shall be delivered to his care and custody, the "Central Government" * may, upon the application of such relative or friend and on his giving security to the satisfaction of the "Central Government"* that the person delivered shall—

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the "Central Government"* may direct, order such person to be delivered to such relative or friend.]

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(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the "Central Government."*

* The words "Central Government" have been substituted for the words "Governor-General in Council" by G. I. Order of 1937. But in British Burma for the words "Central Government" read the word "Governor" (vide G. I. Order of 1937)

† V of 1898

‡ Sub sections 5A and 5B have been added by Act VII of 1935.

CHAPTER IX

EXECUTION OF SENTENCES

104 If a person sentenced by a court-martial shall, in its
 Form of sent that the offender shall
 being hanged by the neck
 until he be dead, or shall suffer death by being shot to death

105 [*Imprisonment to be in military custody*] (*Repealed by Act 33 of 1934*)

106 Whenever any person is sentenced under this Act to
 Commencement of sentence of transportation or imprisonment transportation or imprisonment the term
 of his sentence shall whether it has been
 revised or not, be reckoned to commence
 on the day on which the original proceedings were signed by the
 president or in the case of a summary court-martial by the Court

107 Whenever any sentence of transportation or * imprisonment
 Execution of sentence of trans is passed under this Act or whenever any
 portation or imprisonment sentence so passed is committed to trans-
 portation or to * imprisonment, the com-
 manding officer of the person under sentence, or such other officer as
 may be prescribed shall forward a warrant in the prescribed form to
 the officer in charge of the civil prison in which such person is to be
 confined and shall forward him to such prison with the warrant

Provided that in the case of a sentence of * imprisonment for a
 period not exceeding three months, the confirming officer, or, in the
 case of a sentence which does not require confirmation the Court,
 may direct that the sentence shall be carried out by confinement in
 military custody

Provided further that on active service a sentence of * imprison-
 ment may be carried out by confinement in such place as the officer
 commanding the forces in the field may, from time to time, appoint †

108 Whenever, in the opinion of [an officer commanding an
 Execution of sentence of impri army, 'army corps', † division or indepen-
 sonment in special cases dent brigade] † any sentence or portion of a
 sentence of imprisonment cannot, for
 special reasons conveniently be carried out in accordance with the
 provisions of * section 107, such officer may direct that such sentence
 or portion of sentence shall be carried out by confinement in any civil
 prison or other fit place

§[**108A** In every case in which a sentence of transportation is
 Offenders sentenced to transpor passed under this Act the offender, until
 tation how dealt with until he is transported shall be dealt with in
 transported the same manner as if sentenced to rig-
 orous imprisonment, and shall be deemed to
 have been undergoing his sentence of transportation during the term
 of his imprisonment]

as repealed by

* the General

109 Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined

110 In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods

111 [*Instrument of corporal punishment*] (*Repealed by Act 37 of 1920*)

*[**111A** When a sentence of fine is imposed by a court-martial under section 41†, whether the trial was held within [British India]‡ or not, a copy of such sentence signed and certified by the president of the Court or the officer holding the trial, as the case may be, may be sent to any Magistrate in [British India], ‡ and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898,|| for the levy of fines as if it was a sentence of fine imposed by such Magistrate]

CHAPTER X

PARDONS AND REMISSIONS

¶[**112** (1) When any person subject to this Act has been convicted by a court-martial of any offence the [Governor General in Council or the Commander-in-Chief in India]** or, in the case of a sentence which he could have confirmed or which did not require confirmation, the [officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving]†† or the —, —, —, —

(a) person s ————— upon any conditions which the person or remit the whole or any part of the punishment awarded

(b) mitigate the punishment awarded or commute such punishment for any less punishment or punishments mentioned in this Act
Provided that a sentence of transportation shall not be commuted

* Section 111A has been inserted by Act 11 of 1918

† Certain words after this repealed by Act 33 of 1934 has been omitted

‡ In British Burma for the words 'British India' read the words 'British Burma' (vide G B Order of 1937)

|| V of 1898

¶

word Governor (vide G

he words 'General officer

for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence

(3) When under the provisions of section 49 "a warrant officer or" * a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.

CHAPTER XI

RULES

113 (1) The 'Central Government' † may make rules for the purpose of carrying into effect the provisions of this Act

Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the "removal, retirement or discharge" ‡ from the service of persons subject to this Act ,

(b) the amount and incidence of fines to be imposed under section 21 ,

(bb) the specification of the punishments which may be awarded as field punishments under sections 20 and 45, §

(c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such Courts

(d) the convening and constituting of courts-martial ,

(e) the adjournment, dissolution and sittings of courts-martial ,

(f) the procedure to be observed in trials by courts martial ,

(g) the confirmation and revision of the findings and sentences of courts-martial ,

(h) the carrying into effect sentences of courts-martial ,

(i) the forms of orders to be made under the provisions of this Act relating to courts-martial transportation, or imprisonment ,

"(ii) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependents under section 52A, and the due carrying out of such decisions' § "and' ||

(j) any matter in this Act directed to be prescribed *

(3) All rules made under this Act shall be published in the 'official Gazette † and, on such publication, shall have effect as if enacted in this Act

CHAPTER XII

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS

‡[114 The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts —

Property of deceased persons
and deserters

(1) The commanding officer of the corps, detachment or department to which the deceased person or deserter belonged shall secure all the moveable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank however named) a deposit not exceeding one thousand rupees the commanding officer may, if he thinks fit require the secretary or other proper officer of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules and after the payment thereof in accordance with such requisition no person shall have any right in respect of the deposit except as hereinafter provided

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter the commanding officer shall cause the moveable property to be sold by public auction and shall pay the regimental and other debts in camp or quarters if any, and in the case of a deceased person, the expenses of his funeral ceremonies from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2)

(5) The surplus if any shall, in the case of a deceased person, be paid to his representative (if any) or in the event of no claim to such person

(if any) shall be forthwith all, on the expiry of three months after the death then the deserter shall in the meantime have surrendered or been apprehended

* Certain word after it is repealed by Act 8 of 1930 has been omitted

† The words 'official Gazette' have been substituted by British India for the words 'Burma' for the words 'official'

Explanation—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended].

115. Property deliverable and money payable to the representative of a deceased person under section 114 may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title, and such delivery or payment shall be a full discharge to those ordering or making the same and to the "Crown"* from all further liability in respect of the property or money, but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made

116 The provisions of section 114 shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane, "or, who, being on active service, is officially reported missing."

Disposal of certain property without production of probate, etc.

Application of section 114 to lunatics

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive of the said section, until one year has elapsed from the date of such report' .†

CHAPTER XIII

MISCELLANEOUS

Military Privileges

117 (1) Any person subject to this Act, "other than an [Indian]‡ commissioned officer" § who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, c

(2) When the officer complaint should, under person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority

"Provided that a decision by an authority competent to dispose of the matter complained of shall be final".§

* The word 'Crown' has been substituted in British India for the words "Secretary of State for India in Council" by G I Order of 1937. But in British Burma for the word 'Crown' read the word 'Governor' (vide G B Order of 1937)

† Inserted by Act II of 1920

‡ In British Burma for the word "Indian" read the word "Burma" (vide G Order of 1937)

§ Inserted by Act 33 of 1931

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

*[117A Any [Indian]† commissioned officer who denies himself wronged by his commanding officer or any superior officer who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the "Central Government".‡]

118 (1) No president or member of a court-martial, no Judge Advocate § no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on, or returning from a court-martial, be liable to arrest under civil or revenue process

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial

119 (1) No person subject to this Act shall, so long as he belongs to His Majesty's [Indian]† Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue Court or revenue officer.

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process

(3) For the recovery of such costs, no fee shall be payable to the Court by the complainant

120 Neither the arms, clothes, equipments, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue Court or any revenue officer, in satisfaction of any decree or order enforceable against him

Notes — Portion of pay set aside towards security is pay withheld and not liable to attachment although ordered to be refunded A I R 1930 Lah 105 = 120 Ind Cus 676 Person enrolled under the Act is protected in respect of pay and allowances no connection with military officers does not take away the protection *Ibid* Army Assn tant Surgeon is a warrant officer, and his pay is not attachable 48 A 73 = 23 A L J 929 = A I R 1926 All 122 Pay of a person employed in Army at a frontier post at time of his insolvency cannot be attached A I R 1933 All 153

* Inserted by Act 33 of 1934

† In British Burma for the word 'Indian' read the word "Burma" (*vide* G B Order of 1937)

‡ The words "Central Government" have been substituted for the words "Governor Burma read 1937)

121 Every person belonging to the [Indian]* Reserve Forces shall when called out for or engaged upon or returning from training or service be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act

Application of the last two foregoing sections to reservists

122 (1) On the presentation to any Court by or on behalf of any person subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall, on the application of such person arrange, so far as may be possible for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for

Priority of hearing by Courts of cases in which Indian officers and soldiers are concerned

(2) The certificate from the proper military authority shall state the first and last day of the leave, or intended leave and set forth a description of the case with respect to which the leave was granted or applied for

(3) No fee shall be payable to the Court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case

(4) Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid such question shall be at once referred by the Court to an officer commanding a corps whose decision shall be final

Deserters and Military Offenders

123 (1) Whenever any person subject to this Act deserts the commanding officer of the corps department or detachment to which he belongs shall give written information of the desertion to such civil authorities as in his opinion, may be able to afford assistance towards the capture of the deserter and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate and shall deliver the deserter when apprehended to military custody

(2) Any Police officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority and shall bring him without delay before the nearest Magistrate to be dealt with according to law

* In British Burma for the word Indian read the word Burma (vide G. B. Order of 1937)

124 (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody

125 Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any Magistrate or Police-officer, such Magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer

126 (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a Court of inquiry shall, as soon as practicable be assembled and upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of the "Crown" entrusted to his care, or of his arms, ammunition equipments, instruments, clothing or necessaries, and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter †

Disposal of Property

126A ‡ When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of

* In British India for the word 'Government' the word 'Crown' has been substituted by G. I. Order of 1937. But in British Burma the word 'Government' is to be read for the word 'Crown'

† Certain words after this repealed by Act 11 of 1918 have been omitted

‡ Sections 126 A and 126 B were inserted by Act 11 of 1918,

126B * (1) After the conclusion of a trial before any court martial,

Order for disposal of property
regarding which offence com-
mitted

the Court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, [the officer commanding the army, army corps division or brigade within which the trial was held,]† may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before the Court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence

(2) Where any order has been made under sub section (1) in respect of property re-
committed, a copy of
making the same may,
or not, be sent to a Magistrate in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898 ‡

Explanation—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise

Repeal

127 [Repeal] (Rep by Act XII of 1927)

THE SCHEDULE (Rep by Act XII of 1927)

REPEAL OF ENACTMENTS

THE INDIAN ARMY (SUSPENSION OF SENTENCES)
ACT, 1920ACT NO XX OF 1920
CONTENTS

Sections		Sections	
1	Short title and construction	6	Periodical review of suspended sentences
2	Definitions	7	Procedure on further sentence of offender whose sentence is suspended
3	Suspension of sentences	8	Swing of section 112 Act V III of 1911
4	Calculation of periods of sentence under suspension	9	Provision as to dismissal
5	Power to set aside suspension or order remission	10	Repeal

* Sections 126A and 126B have been inserted by Act 11 of 1918

† For the words within brackets read in British Burma the words General officer commanding the Forces in Burma (vide G. B. Order of 1937)

‡ In British Burma for the words British India read the word "British Burma" (vide G. B. Order of 1937)

§ In British Burma the words 'Presidency town or' have been omitted (vide G. B. Order of 1937)

|| V of 1898

THE INDIAN ARMY (SUSPENSION OF SENTENCES) ACT, 1920*

ACT NO. XX OF 1920

An Act to consolidate and amend the law relating to the
suspension of sentences passed by courts-martial under the
Indian Army Act 1911

Received the assent of the Governor General on the 23rd March, 1920

*WHEREAS it is expedient to consolidate and amend the law relating to the suspension of sentences of imprisonment or transportation passed by courts-martial on persons subject to the Indian Army Act, 1911 † It is hereby enacted as follows —

Notes —This Act repeals the Indian Army (Suspension of Sentences) Act 1917 (IV of 1917)

Consolidating Act —In construing an Act which is a consolidating Act which does not profess to amend or alter the provisions of the Acts consolidated *pro a facie* the same effect ought to be given to its provisions as was given to those of the Acts for which it was consolidated 25 Q B D 183 59 L J Q B 355=53 L T 405=55 J P 36 In construing a consolidating and amending Act as distinguished from a codifying Act the Court is entitled to have regard to previous decisions (1892) 2 Ch 557=71 L T 72

1 [This Act may be called the Indian Army (Suspension of Sentences) Act, 1920] ‡ and, shall be construed as one with the principal
Short title and construction

Notes —This Act should be construed with the Indian Army Act, 1911

Definition 2 In this Act, unless there is anything repugnant in the subject or context,—

(a) “committed” means committed to prison or to confinement in military custody

(b) competent military authority means superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority

(c) imprisonment includes confinement in military custody,

(d) ‘principal Act’ means [the Indian Army Act, 1911, †] §

(e) “sentence” means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act or passed by way of reduction or commutation, and “sentenced” has the same meaning

he [Commander in Chief
principal Act to con-
vene general courts-martial or summary general courts-martial

* In British Burma the title and preamble of the Act have been omitted by G B Order of 1937

† Act VIII of 1911

) Act 1920’ substitute
(1937)

Act 1911” substitute

|| In British Burma in clause (f) of section 2 substitute ‘Governor’ for ‘Commander in Chief in India’ (vide G B Order of 1937)

3 (1) Where a person subject to the principal Act is sentenced the confirming officer when confirming the sentence, or, in the case of a sentence which does not require confirmation, the officer holding the trial or the President of the court martial when passing sentence may, notwithstanding anything in the principal Act, direct that such person be not committed until the orders of a superior military authority have been obtained

(2) A superior military authority may, in the case of any such offender so sentenced,—

(a) direct that, until his orders have been obtained, such offender shall not be committed, and

(b) suspend the sentence whether or not the offender has already been committed

(3) Where, in accordance with any order passed under sub-section (2), a sentence is suspended, the offender shall, whether he has been committed or not, forthwith be released

Notes—This section is an enabling section. It empowers the confirming officer when the sentence requires confirmation or the officer holding the trial or the President of the court martial, when passing the sentence to suspend the sentence, in spite of anything contained in the Army Act 1911 (Act VIII of 1911). Similarly the Commander in Chief in India or any officer empowered under the Army Act, 1911 (Act VIII of 1911) to convene general courts martial or summary courts martial may direct that the offender shall not be committed until his orders are obtained or may suspend the sentence of the offender

Calculation of periods of sentence under suspension

4 Any period during which a sentence is under suspension shall be reckoned as part of the term of such sentence

Notes—The suspended period by virtue of the section will be considered as part of the term of such sentence

Power to set aside suspension or order remission

5 A superior military authority may, at any time whilst a sentence is suspended under this Act order—

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted

Notes—This section empowers the Commander in Chief in India or any officer empowered under the Army Act 1911 to convene general courts martial or summary general courts martial to order that an offender should be imprisoned for the unexpired period of his sentence after suspension or his sentence be remitted altogether. The circumstances under which such sentence can be remitted is given in section 6

6 Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than four months, be reconsidered by a competent military authority, and if, on any such reconsideration, it appears to such authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall, if he is not also a superior military authority, refer the case to a superior military authority

Notes—Any time after suspension the conduct of the offender may be enquired into by any competent military authority. If his conduct appears satisfactory to the enquiring military authority he may, if he is authorised remit the sentence or he may recommend the case to a superior military authority for the remission of his sentence

Procedure on further sentence of offender whose sentence is suspended

7 Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, the

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently,

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed on the unexpired portion of the previous sentence, but both sentences shall run concurrently, and

(c) if the further sentence is for a period of three months or less and is not suspended under this Act, the offender shall be committed on that sentence only and the previous sentence shall (subject to any order which may be passed under section 5 or section 6) continue to be suspended

8 The powers conferred by this Act shall be in addition to, and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentence under section 112 of that Act

Notes —This section saves the provision of section 112 of the Indian Army Act (Act VIII of 1911)

9 Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under this Act, then, notwithstanding anything contained in the principal Act or in any rules made thereunder, such dismissal shall not take effect until so ordered by a superior military authority

Provided that, if a sentence is remitted under this Act, the punishment of dismissal shall also be remitted

Notes —When an offender has been sentenced as well as dismissed from his service and the sentence has been suspended the order of dismissal cannot be given effect to unless confirmed by a superior military authority Where the sentence is remitted under s 6, the punishment of dismissal shall also be remitted

10 [Repeal of Act IV of 1917] (Repealed by the Repealing Act of 1927)

THE AUXILIARY FORCE ACT (XLIX OF 1920)

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[THE AUXILIARY FORCE ACT, 1920]*

ACT NO XLIX OF 1920

An Act to constitute an auxiliary force for service in [India]*

Received the assent of the Governor General on the 22nd September, 1920

[WHEREAS it is expedient to constitute an auxiliary force for service in India, It is hereby enacted as follows] —*

Notes — The replacement of the Indian Volunteer Force which had been in existence for nearly 60 years by the Indian Defence Force was a war measure necessitated by the exigencies of the situation. Compulsory service was adopted to meet the needs of an Imperial emergency. Reversion to voluntary enrolment is now considered desirable but it is essential to maintain and develop in the reconstituted Volunteer Force the improvements in organization and in the standard of training effected under war conditions. — *See Statement of Objects and Reasons*

Short title, extent and commencement

[1 (1) This Act may be called the Auxiliary Force Act 1920

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to European British subjects "in any Indian State or tribal area"†

(3) It shall come into force on the first day of October, 1920.‡

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

"Advisory Committee" means an Advisory Committee constituted under section 28 for the prescribed military area, or part of a prescribed military area, within which a person subject to this Act for the time being resides or is serving as the case may be,

"competent military authority" means the authority prescribed as competent to perform or exercise all or any of the duties imposed or powers conferred on the competent military authority by this Act '§

"enrolled person" means a person enrolled in the prescribed manner under this Act,

"enrolling officer" means an officer authorised to enroll persons under this Act

"prescribed" means prescribed by rules made under this Act, and "prescribe" has a corresponding meaning,

"regulation" means a regulation made under section 31, and

"training year" means a period of twelve months beginning on the first day of April and ending on the thirty-first day of March

3 There shall be raised and maintained in the manner hereinafter provided an auxiliary force for service in [India]* to be designated the [Auxiliary Force, India]†

Classes who may be enrolled

4 Every person who—

(a) is a European British subject as defined in the Code of Criminal Procedure, 1898, † or §

(b)§ is a British subject of European descent in the male line,|| shall, subject to the provisions of this Act, be eligible for enrolment thereunder

Notes — European British subject means—(i) any subject of His Majesty of European descent in the male line born in the colony or (ii) any subject of His Majesty's person by legitimate descent. *vide* as amended by Act XII of 1923. The amendment that the number of persons who will be entitled to the privilege conferred by the Criminal Procedure Code on European British subjects will now be reduced by reason of the fact that they will only be claimable by persons of European descent in the male line—*vide* *Statement of Objects and Reasons of Act XII of 1923*. It seems that clause (c) is no longer necessary. The legitimate descent of the person must be proved C M II C R 7

Legislative Changes —The omission of clause (b) is designed to secure that in future persons eligible for enrolment under the Indian Territorial Force Act shall enrol under that Act and not under this Act. The operation of section 6 clause (c) of the General Clauses Act 1897, will preserve the right and liabilities of existing members of the Auxiliary Force—*Statement of Objects and Reasons*

5 (1) Any male eligible for enrolment under this Act who has attained the age of sixteen years and is not a member of His Majesty's regular naval, military or air forces ¶ may apply to be enrolled in the [Auxiliary Force, India,]† and, if he satisfies the prescribed conditions, may be enrolled therein in the prescribed manner, and shall thereupon become subject to the provisions of this Act

(2) "Subject to the prescribed conditions ** an applicant for enrolment may apply to be enrolled for service in any particular branch, or in any particular corps or unit ††

6 Every enrolled person shall be liable to undergo military training as provided by or under this Act until discharged from the [Auxiliary Force, India,]† as hereinafter provided

* In British Burma for the word 'India' read the word 'Burma' (*vide* G B. Order of 1937)

† In British Burma for the words 'Auxiliary Force India' read the words "Burma Auxiliary Force" (*vide* G B Order of 1937)

‡ Act V of 1898

§ Clause (b) has been omitted by Act 10 of 1923 and clause (c) has been re lettered as clause (c), *Ibid*

|| The word 'or' and the clause (d) have been omitted by Act X of 1928

¶ Certain words after this repealed by G I Order of 1937 and G B Order of 1937 respectively have been omitted

** Words within quotations have been inserted by Act X of 1933

†† Certain words after this repealed by Act X of 1933 have been omitted

Notes — 1.

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ment of Object is as follows

7 Every enrolled person liable to undergo military training under section 6 shall, on and from the first day of April next following the date on which he attains the age of eighteen years or, if he has already attained the age of eighteen years on and from any later date on which he is enrolled be liable to perform military service under this Act

Notes — A person who has attained the age of 16 years may be enrolled but his compulsory training will not commence unless he attains the age of 18 years

8 (1) Every enrolled person shall, without unnecessary delay, be appointed by or under the orders of, the competent military authority to a corps or unit of the [Auxiliary Force, India]* and on receipt of an order so appointing him shall report himself for the purpose of joining such corps or unit at such time and place as may be specified in the order

(2) Any person who has been enrolled for service in any particular branch corps or unit shall be appointed to a corps or unit of that branch or to that corps or unit, as the case may be

Notes — Under section 5 a person willing to be enrolled has the option of enrolling himself for service in any particular branch or in any particular corps or unit located in the prescribed military area within which he for the time being resides. In the absence of any such enrolment he may be asked to join any corps or unit by a competent military authority

9 Every enrolled person liable to perform military service under this Act who on becoming so liable 'is included in the active class † shall within the training year in which he becomes so liable undergo 'preliminary training of such amount as may be ordered by the competent military authority subject to the limits specified in Schedule I"†

Provided that if such preliminary training cannot be completed within that training year, it may be completed at the discretion of the "officer commanding the corps or unit to which such enrolled person belongs"† in the training year next following

Provided further, that any person may be exempted either wholly or in part by the officer commanding his corps or unit from the necessity of undergoing preliminary training required by this section and shall on the publication in the orders of the corps or unit of such exemption be deemed to the extent of such exemption to have completed such preliminary training.††

Notes — Under section 12 on attaining the age of 31 years a member of the force is entitled to be passed into the First class of the Reserve and thereupon to undergo training on a reduced scale — *Vide sect on 12 (infra)* The main principle underlying those provisions is that the European and domiciled community being employed for the most part in the public services or in commercial and industrial occupations of importance

* In British Burma for the words Auxiliary Force, India read the words Burma Auxiliary Force (vide G. B. Order of 1937)

† The words within quotations have been substituted by Act V of 1933

†† For the second proviso the new proviso has been substituted by Act V of 1933

cannot be regarded as available for any but purely local service, and further that military training must be restricted as far as possible to the earlier years of service in the force —
Statement of Objects and Reasons

10 [Periodical training of persons entitled to rank as officers.]
 (Repealed by Act X of 1933)

11 Every enrolled person liable to perform military service under this Act * shall be included "by the officer commanding the corps or unit to which he is appointed"† in one or other of the following classes, namely —

(a) the Active Class "or" ‡

"(b) the Reserve Class,"† and shall undergo "periodical training if such amount as may be ordered by the competent military authority subject to the limits specified in Schedule I† for the class, in which he is for the time being included" ‡

Notes —To give effect to the principle laid down in notes under section 9 the different classifications are made

Classification

12 (1) Every commissioned officer of the [Auxiliary Force, India],§ shall be included in the Active Class until he relinquishes his commission

(2) Enrolled persons liable to perform military service under this Act not being commissioned officers of the [Auxiliary Force, India],*§ shall be classified as follows, namely —

(a) every such person who is required by section 9 to undergo preliminary training "or who being so required" † has completed or is deemed to have completed the same shall be included in the Active Class 'until he is transferred to the Reserve Class by order of the officer commanding the corps or unit' ‡

"(b) every such person who is transferred from the Active Class under the provisions of clause (a) or who on enrolment is assigned to the Reserve Class by order of the officer commanding the corps or unit shall be included in the Reserve Class' ‡

(3) Any enrolled person who ceases * to be a commissioned officer of the [Auxiliary Force India],§ shall thereupon be included in the Class in which he would have been included under this section if the provisions of * sub-section (1), * had not applied to him, and shall undergo periodical training accordingly

(4) Any person who is under this section included in "the Reserve Class" † may apply to the competent military authority to be included "in the Active Class" ‡ and shall 'if the competent military authority grants the application' ‡ thereupon be deemed to be included in that Class ||

Notes —The scale of training laid down in the Bill is based on the principle as already indicated On attaining the age of 31, a member of the force is entitled to be passed into the First Class of the Reserve and thereupon to undergo training on a reduced scale On

attaining the age of 40 he will be included in the Second Class of the Reserve and will then be required to complete the annual musketry course only. It is permissible however, for any person in the Reserve to undertake from year to year the liabilities imposed on person belonging to a higher class — *Statement of Objects and Reasons*

Variations of training

13 (1) The competent military authority may, by order in writing,—

"(a) on the recommendation of the Advisory Committee, direct that any enrolled person included in the Active Class shall, for the purposes of periodical training, be included for any stated period in the Reserve Class, or,"

(b) on his own motion or on the recommendation of the Advisory Committee, reduce the specified amount of training either in individual cases or in the case of any unit or part thereof for any stated period

(2) The competent military authority shall grant 'in respect of each individual or unit or part thereof'* whose training is reduced under clause (b) of sub section (1) a certificate setting forth the amount of training to be undergone during the said period

N.B. — "in respect of" localities and for this reason it matter of training to the local rough the agency of Advisory ining in individual cases being

14 Every enrolled person shall, if and when required by the

Medical Examination

"officer
which h

medical examination as may be necessary

any, to which he is fit to undergo military training or to perform military service, before a medical officer appointed or approved in that behalf by the competent military authority, and for the purposes of such medical examination shall comply with the directions of such medical officer

15 (1) Every person appointed to a corps or unit under section 8

Transfers

shall remain in that corps or unit until transferred to another corps or unit by, or

under the orders of, the competent military authority, but no person shall be transferred from the Infantry branch to another branch or from one unit to another unit located in the same prescribed military area except at his own request

(2) Any person so transferred from the Infantry branch to another branch may be required to undergo such further preliminary training, not exceeding eight days, as may be ordered by the competent military authority, and thereafter shall undergo the periodical training 'to which he is liable in'* the branch to which he is transferred

Provided that any periodical training already undergone by such person in the training year in which he is transferred shall be deemed to have been undergone in such other branch

Explanation — For the purposes of this section and of Schedule I, a day shall be deemed to consist of four hours of actual military drill

or instruction and may be made up of fractions of a day not more than four in number

16 (1) Any enrolled person who leaves his place of residence [in India]* for the time being and thereby leaves the area commanded by one competent military authority for that commanded by another shall, if he does not intend to return to the area which he leaves, notify the competent military authority commanding that area of his change of residence

(2) If such person having intended to return does not return within three months he shall notify the competent military authority as aforesaid immediately on the expiry of that period

(3) The competent military authority on being notified of a change of residence under sub section (1) or sub section (2) may, subject to the provisions of section 15, transfer such person from the corps or unit in which he is serving to another corps or unit

17 (1) Any enrolled person who has attained the age of forty-five years or has completed four years' service from the date of his enrolment shall, on application made by him in the prescribed manner, be entitled to receive his discharge from the Auxiliary Force, India

(2) An enrolled person who is not entitled to his discharge under sub-section (1) may be discharged by the competent military authority on a recommendation of the Advisory Committee in this behalf

(3) Any enrolled person may be discharged by such authority, and subject to such condition, as may be prescribed †

"(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no enrolled person who is for the time being engaged in military service under the provisions of this Act shall be entitled to receive his discharge before the termination of such service" †

Notes —Clauses 3 and 4 are reproduced for corresponding provisions in the Territorial Force Act and fill in a blank in the existing Act

18 No person liable to perform military service under this Act shall be required to perform such military service except—

(a) when called out with any portion of the [Auxiliary Force, India,] ‡ by an order of the senior military officer present either to act in support of the civil power or to provide guards which in the opinion of such officer are essential or

(b) when any portion of the [Auxiliary Force India] ‡ to which he belongs has been embodied regular forces in the event of such embodiment issued by the in the official Gazette], § or

(c) when attached at his own request to any regular forces

* To be filled in

of 1937

the words

British India
substitute

19. No person called out under clause (a), or embodied under clause (b) of section 18 shall be required to perform military service beyond the limits of the prescribed military area in which the corps or unit to which he has been appointed or is for the time being attached is located, save when it is, in the opinion of the senior military officer present, necessary to proceed beyond those limits in the course of the military operations upon which the corps or unit or any portion thereof is for the time being engaged

Notes—The liability to local service is subject to the provision that in circumstances of emergency to be notified formally by Government any part of the force may be required to serve beyond the limits of the military area to which it belongs but in no case out of India.—*Report of the Select Committee*

20 Any portion of the [Auxiliary Force, India],* which, having been called out or embodied under section 18, is performing military service, shall be replaced by regular troops or otherwise as soon as circumstances permit, and shall not be required to perform such service after such replacement has been effected to the satisfaction of the senior military officer present or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 18

21 (1) Every commissioned officer of the [Auxiliary Force, India],* when doing duty as a commissioned officer, and every non-commissioned officer and man of the said Force—

(a) when attached to or otherwise acting as part of or with any regular forces, and

(b) when called out by an order, or embodied by a notification, under section 18,

shall be subject to the provisions of the Army Act † and any orders or regulations made thereunder, and the said Act, orders and regulations shall apply to every such person in the circumstances aforesaid as if the same were enacted in this Act, and as if such person held the same rank in His Majesty's Army as he holds for the time being in the said Force, "subject, in the case of an officer to the terms of his commission and the orders of His Majesty, and in the case of a non-commissioned officer or man to the orders of the [Central Government]" ‡§

"(2) Where an offence punishable under the Army Act has been committed by any person whilst subject to that Act under the provisions of sub-section (1), such person may be taken into and kept in military custody and tried and punished for such offence although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished if he had continued to be so subject :

* In British Burma for the words 'Auxiliary Force, India' substitute the words 'Burma Auxiliary Force' (vide G. B. Order of 1937)

† 44 & 45 Vict., c. 58

‡ Inserted by Act X of 1928

§ The words 'Central Government' have been substituted for the words 'Governor General' by G. I. Order of 1937. But in British Burma for the words 'Governor General' read the word 'Governor' (vide G. B. Order of 1937)

Provided that no such person shall be kept in military custody after he has ceased to belong to the [Auxiliary Force, India]* unless he has been taken into or kept in military custody, on account of the offence before the date on which he ceased so to belong, nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry**

22 If any person liable to perform military service under this Act fails to comply with an order or notification under section 18 calling him out or embodying him for military service, any District Magistrate [or Chief Presidency Magistrate]† may, on the application of the competent military authority or of an officer empowered by such authority in writing in that behalf, cause such person to be arrested and brought before him and, if the Magistrate is satisfied that such person has been duly required to perform military service the Magistrate may, without prejudice to any penalty which such person may have incurred, make over such person in custody to the military authority

Refusal to appear for military service
Penalties for breach of sections 8, 14 and 16

23 An enrolled person who refuses or without lawful excuse (the burden of proving which shall lie upon such person) neglects—

- (a) to comply with any order under section 8, or
- (b) to attend for medical examination, or to comply with the directions of the medical officer, as required by section 14, or
- (c) to notify any change of residence as required by section 16, shall be punishable with fine which may extend to fifty rupees

24 An enrolled person commits an offence if he in circumstances when he is not subject to military law, does any of the following acts, namely —

(1) when on parade or undergoing military training or wearing, His Majesty's uniform —

(a) strikes or uses or offers violence to or uses threatening or insubordinate language to or behaves with contempt to, his superior officer, or

(b) disobeys any standing order of, or lawful command given by, his superior officer, or

(c) neglects to obey a general or garrison order made specially applicable to the [Auxiliary Force, India,]* by the competent military authority, or

(d) is in a state of intoxication, or

(e) being a non-commissioned officer strikes or ill-treats any

person subject to military law or to this Act, or to the [Indian Territorial Force Act, 1920,]* who is his subordinate in rank or position ,

(2) without sufficient cause fails to appear at the place of parade at the time fixed or to attend at any place in his capacity as a member of the [Auxiliary Force, India],† when duly required so to attend, or when on parade without sufficient cause quits the ranks ,

(3) without sufficient cause fails to perform any part of the training which by or under this Act he is required to perform ,

(4) strikes, or uses or offers violence to, any person whether subject to military law or not in whose military custody he is placed, and whether such person is or is not his superior officer ,

(5) resists an escort whose duty it is to arrest him or detain him in military custody ,

(6) being under arrest or detention or otherwise in lawful military custody escapes or attempts to escape ,

(7) when in charge of any property belonging to 'the Crown'† or to a corps or unit of the [Auxiliary Force, India],† makes away with, or is concerned in making away with, any such property ,

(8) wilfully injures, or by culpable neglect loses or causes injury to, any such property as is mentioned in clause (7) ,

(9) wilfully ill-treats a horse or other animal used in the public service ,

(10) knowingly furnishes a false return or report of the number or state of men under his command or charge, or of any money, arms or ammunition, clothing, equipment, stores or other property in his charge ,

(11) through design or culpable neglect omits to make or send any return of any matter, mentioned in clause (10) which it is his duty to make or send ,

(12) when it is his official duty to make a declaration respecting any matter, makes a declaration respecting such matter which he either knows or believes to be false or does not believe to be true ,

(13) knowingly makes against any person subject to military law or to this Act or to the [Indian Territorial Force Act, 1920],* an accusation which he either knows or believes to be false or does not believe to be true,

(14) falsely personates any other person at any parade or on any occasion when such other person is required by or under this Act to do any act or attend at any place, or abets any such act of personation

25 (1) Any person committing any of the offences specified in sub-clauses (b), (c) and (d) of clause (1) or in clauses (2), (3), (8), (11) and (14) of section 24 shall be punishable with fine which may extend to two hundred rupees

(2) Any person committing any other offence specified in section 24 shall be punishable with imprisonment which may extend to two

* In British Burma for the words "Indian Territorial Force Act 1920" read the words "Burma Territorial Force Act (vide G. B. Order of 1937)"

Provided that no such person shall be kept in military custody after he has ceased to belong to the [Auxiliary Force, India]* unless he has been taken into or kept in military custody, on account of the offence before the date on which he ceased so to belong nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry *

Content of Objects and Reasons

22 If any person liable to perform military service under this Act fails to comply with an order or notification under section 18 calling him out or embodying him for military service, any District Magistrate [or Chief Presidency Magistrate] † may, on the application of the competent military authority or of an officer empowered by such authority in writing in that behalf, cause such person to be arrested and brought before him and, if the Magistrate is satisfied that such person has been duly required to perform military service the Magistrate may without prejudice to any penalty which such person may have incurred, make over such person in custody to the military authority

Penalty as for breach of sections 8 14 and 16

23 An enrolled person who refuses or without lawful excuse (the burden of proving which shall lie upon such person) neglects—

- (a) to comply with any order under section 8, or
- (b) to attend for medical examination, or to comply with the directions of the medical officer as required by section 14, or
- (c) to notify any change of residence as required by section 16, shall be punishable with fine which may extend to fifty rupees

24 An enrolled person commits an offence if he in circumstances when he is not subject to military law, does any of the following acts, namely—

(1) when on parade or undergoing military training or wearing His Majesty's uniform—

(a) strikes or uses or offers violence to or uses threatening or insubordinate language to or behaves with contempt to, his superior officer, or

(b) disobeys any standing order of or lawful command given by, his superior officer, or

(c) neglects to obey a general or garrison order made specially applicable to the [Auxiliary Force, India,]* by the competent military authority or

(d) is in a state of intoxication, or

(e) being a non-commissioned officer strikes or ill-treats any

* In British Burma for the words within brackets read the words Burma Auxiliary Force (vide G B Order of 1937)

† Inserted by Act 31 of 1923

‡ The words within brackets have been omitted in British Burma by G B Order of 1937

person subject to military law or to this Act, or to the [Indian Territorial Force Act, 1920]* who is his subordinate in rank or position ,

(2) without sufficient cause fails to appear at the place of parade at the time fixed or to attend at any place in his capacity as a member of the [Auxiliary Force, India],† when duly required so to attend, or when on parade without sufficient cause quits the ranks

(3) without sufficient cause fails to perform any part of the training which by or under this Act he is required to perform ,

(4) strikes, or uses or offers violence to, any person whether subject to military law or not in whose military custody he is placed, and whether such person is or is not his superior officer ,

(5) resists an escort whose duty it is to arrest him or detain him in military custody ,

(6) being under arrest or detention or otherwise in lawful military custody escapes or attempts to escape ,

(7) when in charge of any property belonging to 'the Crown ‡ or to a corps or unit of the [Auxiliary Force, India],† makes away with, or is concerned in making away with, any such property ,

(8) wilfully injures, or by culpable neglect loses or causes injury to, any such property as is mentioned in clause (7)

(9) wilfully ill-treats a horse or other animal used in the public service ,

(10) knowingly furnishes a false return or report of the number or state of men under his command or charge or of any money arm, or ammunition, clothing, equipment, stores or other property in his charge ,

(11) through design or culpable neglect omits to make or send any return of any matter, mentioned in clause (10) which it is his duty to make or send ,

(12) when it is his official duty to make a declaration respecting any matter, makes a declaration respecting such matter which he either knows or believes to be false or does not believe to be true

(13) knowingly makes against any person subject to military law or to this Act or to the [Indian Territorial Force Act, 1920],* an accusation which he either knows or believes to be false or does not believe to be true,

(14) falsely personates any other person at any parade or on any occasion when such other person is required by or under this Act to do any act or attend at any place or abets any such act of personation

25 (1) Any person committing any of the offences specified in sub-clauses (b) (c) and (d) of clause (1) or in clauses (2) (3), (8), (11) and (14) of section 24 shall be punishable with fine

Punishment for offences under section 24

which may extend to two hundred rupees

(2) Any person committing any other offence specified in section 24 shall be punishable with imprisonment which may extend to two

* In British Burma for the words 'Indian Territorial Force Act 1920' read the words 'Burma Territorial Force Act (vide G. B. Order of 1937)'

months, or with fine which may extend to two hundred rupees, or with both

Notes—When members of the Auxiliary Force are not governed by the provisions of the Army Act military discipline will be enforced either under the summary powers of the commanding officer or in the case of more serious offences and in any case should the Courts. In no case can a or minor punishment Magistrate unless it constitutes an offence under the provisions of the Act.

Reasons

26 The competent military authority may in his discretion dismiss any enrolled person from the [Auxiliary Force, India] *
Dismissal

27 The [Central Government]† may prescribe summary and minor punishments for offences under section 24 or for contravention of any rule or regulation made under this Act to which enrolled persons shall be liable without the intervention of a Criminal Court, and the officer or officers by whom and the circumstances in which and the extent to which such summary and minor punishments may be inflicted, and the manner in which any such punishment may be enforced
Summary and minor punishments

Provided that no punishment involving any kind of imprisonment shall be imposed as a summary or minor punishment

Provided, further that no summary punishment shall be inflicted in any case in which the accused claims to be tried by a Criminal Court

Notes—*Read notes under section 25*

‡[**27A** When any non commissioned officer or man of the Auxiliary Force is required by or in pursuance of any rule regulation or order made under this Act, to attend at any place a certificate purporting to be signed by the prescribed officer stating that the person so required to attend failed to do so in accordance with such requirements, shall, without proof of the signature or appointment of such officer be evidence of the matters stated therein]
Presumption as to certain documents

Notes—This section has been added by Act V of 1928. This amendment enacted for provision to be made regulating the relation between officers and non-commissioned officers of the Sanitary Force and officers and non commissioned officers of the Regular Army when they are acting together—*State is of Objects and Reasons*

28 (1) The [Central Government]‡ shall constitute for each prescribed military area one or more Advisory Committees each consisting of three or more members of whom one shall be the competent military authority§ and the others shall be persons eligible for enrolment in the
Advisory Committees

* In British Burma for the words 'Auxiliary Force India' read the words 'Burma Auxiliary Force' (vide G. O. Order of 1937)

† In British India the words 'Central Government' have been substituted for the words 'Governor General in Council and Local Government' respectively by G. O. Order of 1937. But in British Burma for these words read the word 'Governor' (vide G. O. Order of 1937)

‡ Inserted by Act V of 1928

§ Certain words after this repealed by Act V of 1933 have been omitted

[Auxiliary Force, India],* within the meaning of section 4 who shall be appointed annually by, or under the orders of the [Central Government]†

(2) Any Advisory Committee constituted for a prescribed military area or a part thereof, as the case may be, which includes a [Presidency-town or any other]‡ place to which the [Central Government]† may, by order in writing declare this subsection to apply, shall consist of not less than five members, of whom not more than two shall be persons in the [service of the Crown]§

(3) The [Central Government]† shall prescribe the duties powers and procedure of Advisory Committees and in particular the matters in respect of which the competent military authority shall be bound to give effect to a recommendation of an Advisory Committee unless the [Central Government]† otherwise directs

Notes—This section lays down the constitution of the Advisory Board. In the case of any area including a Presidency town such Advisory Board must consist at least of five members of whom not more than two shall be Government servants

Constitution and disbandment of units

29 The [Central Government]† may constitute any corps or unit and may disband any corps or unit constituted under this Act

Power to make rules

30 (1) The [Central Government]† may make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing powers such rules may—

(a) provide for the appointment of enrolling officers,
(aa) prescribe the authority which shall be competent military authority for any purpose under this Act, †

(b) prescribe military areas for the purposes of this Act,

(c) prescribe the manner in which and the conditions subject to which European British subjects¶ may offer themselves for enrolment under this Act, "and the conditions governing applications to be enrolled in a particular branch of corps or unit **

(d) define the manner in which persons or any class of persons liable to military training under section 6 but not to military service under section 7,

(e) prescribe the military training to be undergone by persons liable to military training under section 6 but not to military service under section 7,

* In British Burma for the words Auxiliary Force India read the words Burma Auxiliary Force (vide G. B. Order of 1937)

† In British India the words Central Government have been substituted for the words Governor General in Council and Local Government respectively by G. B. Order of 1937. But in British Burma for these words read the word Governor (vide G. B. Order of 1937)

‡ In British Burma the words Presidency town or any other have been omitted by G. B. Order of 1937

§ In British India for the words service of Government the words service of the Crown have been substituted. But in British Burma for these words read the words service of Government (vide G. B. Order of 1937 respectively)

¶ Inserted by Act X of 1937

** Certain words after this repealed by Act 8 of 1930 have been omitted

Added by Act X of 1937

(f) prescribe the "conditions governing the grant of, and the * rates of pay for, and provide for the grant of allowances to, 'enrolled persons , †

(g) prescribe for any military area which is a railway area or for any area beyond the limits of [British India]‡ the [authority]§ which shall be [deemed]|| to be ||the District]¶ Magistrate for all or any of the purposes of this Act , and

(h) provide for any other matter which under this Act is to be or may be prescribed

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication

(5) All rules made under this section shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act

31 The [Commander-in-Chief of His Majesty's forces in India]**

Power to make regulations may make regulations consistent with this Act and the rules made thereunder providing generally for details connected with the organization and personnel of the [Auxiliary Force, India]†† and for the duties, equipment, military training, allowances and leave of enrolled persons

32 For the purposes of sections 128 130 and 131 of the Code of Criminal Procedure, 1898, all officers,

Certain persons subject to this Act to be deemed part of His Majesty's Army for certain purposes non-commissioned officers and men liable to perform military service under this Act who have been appointed to a corps or unit shall be deemed to be officers, non-

commissioned officers and soldiers, respectively, of His Majesty's Army

33 Save as otherwise provided by section 27, no offence under

Trial of offences this Act shall be tried save by a Court not inferior to that of [a Presidency

Magistrate]‡‡ or a Magistrate of the first class

34 No enrolled person shall be liable to pay any municipal or

Exemption from local taxation other tax in respect of a horse bicycle, motor-bicycle, motor car or other means of conveyance which he is authorised by

* Inserted by Act V of 1933

† The words within quotations have been substituted by Act 6 of 1931

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a general or special order of the competent military authority to maintain in his capacity as a member of the Auxiliary Force, India

*35 [Repeals] Repealed by the amending Act of 1938

36 [Repeals] Repealed by the Repealing Act XII of 1927

SCHEDULE I

(See sections 9 II 1 and 15)

TRAINING

1	1 preliminary (a) for infantry	33 days and the annual musketry course as laid down in regulations	
	(b) for other branches	40 days and the annual musketry or gun course as laid down in regulations	
2	Periodical		
	(1) Active class—		
	(a) for infantry		al musketry
	(b) for other branches		al musketry
† (2)	Reserve Class :		
	(a) for infantry		in regula
	(b) for other branches	tions	

NOTE (cf section 15) —A day consists of four hours of actual military drill or instruction and may be made up of fractions of a day not more than four in number

SCHEDULE II

ENACTMENTS REPEALED

(See section 36)

Repealed by Act XII of 1927

THE BANKERS' BOOKS EVIDENCE ACT, 1891.

TABLE OF CONTENTS

Sections	Sections
1 Title and extent	5 Case in which officer of bank not compellable to produce books
2 Definitions	6 Inspection of books by order of Court or Judge
3 Powers to extend provisions of Act	7 Costs
4 Mode of proof of entries in Bankers' books	

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THE BANKERS' BOOKS EVIDENCE ACT, 1891.

ACT NO XVIII OF 1891.

An Act to amend the Law of Evidence with respect to Bankers' Books

(Received His Excellency's the G -G's Assent on the 1st October, 1891.)

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books, It is hereby enacted as follows :—

Title and extent **1** (1) This Act may be called the Bankers' Books Evidence Act, 1891

(2) It extends to the whole of British India,*

Notes—This Act is based on English Bankers' Books Evidence Act, 1879 (42 Vict c 11). The reason of its enactment is thus stated "It is sometime since the

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Extent—This Act has been declared in force in the Southal Parganas by Reg 3 of 1873, s 3 as amended by Reg 3 of 1899, s 3, in Upper Burma (except the Shan States) by Act 13 of 1898 s 4 and the British Baluchistan by Reg 2 of 1913, s 3

Definitions

2 In this Act, unless there is something repugnant in the subject or context—

(1) "company" means a company registered under any of the enactments relating to companies for the time being in force in "any part of His Majesty's dominions or incorporated by an Act of Parliament or by an Indian law or by Royal Charter or by Letters Patent."†

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers,

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided,

"(c)† any post office savings bank or money order office."

(3) "bankers' books" include ledgers, day books, cash-books, account-books, and all other books used in the ordinary business of a bank.

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken :

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† To sub s (2) of s 2, cl (c) has been added by s 2 of the Bankers' Books Evidence Act (I of 1933)

(6) "Judge" means a Judge of [a High Court]*

(7) "trial" means any hearing before the Court at which evidence is taken and

(8) 'certified copy' means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title

Company—This definition was added by Act VII of 1900. The original definition of company in the Companies Act, 1862, was "any company or association of persons, whether incorporated or not, carrying on business in the United Kingdom and in the case of a company, having a share capital." This definition was discovered that the entries were by copies. This definition does not include foreign banks unless they are included by notification issued under section 8.—*Vide Statement of Objects and Reasons to Act VII of 1900*

Bank and Banker—In the English Act the definitions of bank and banker are thus given—In this Act the expressions bank and banker mean any person persons partnership or company or firm or the holder of a bill of exchange made a return to the Comptroller of the Customs under the Act relating to the duties of the Comptroller of the Customs whether the bank or banker is a bank or banker or not.

Court R v

s 10

3 The Local Government may from time to time, by notification in the official Gazette, extend the provisions of the Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books namely, a cash book, a day-book or journal and ledger and may in like manner rescind any such notification

Notes—The Local Government may include all foreign banks under the Act by virtue of the power of the notification given under the section.

4 Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings, be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise

Notes.—This section corresponds to sections 3 4 and 5 of the English Act Before

certified copy of any entry in a banker's book shall be received as *prima facie* evidence of

* In British Burma for the words 'a High Court' read the words 'High Court' (G. B. Order of 1937)

the existence of any such entry. The term "certified copy" is defined in clause (8) of required statement should be subscribed by the bank with his name and official title. But the required statement must be given by a partner or officer of the bank either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits (*Vide ss 1 and 5 of Stat 42 Vict, c 11*). This section makes copies of such entries evidence against any one. Thus the entries in a defendant's bankers' books are made evidence against the plaintiff *Harding v. Williams*, 14 Ch D 197 see also *Dwarkan Das v Sant Bakshi*, 18 A 91. When before the Act a

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5 No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Notes—A banker is only exonerated by this section from personal attendance in Court when he complies with the provisions of section 4. *Emmott v Star News paper & Co*, 62 L J Q B 77. Except when the bank is a party this section exempts the banker from being compelled to produce any book that can be proved by a copy or to appear as a witness unless specially ordered to do so. S 94 (3) of the Criminal Procedure Code does not exempt Bankers' books from production before the Police and an officer in charge of a police station conducting an investigation is therefore entitled to inspect them even without an order of Court. S 5 of the Bankers' Books Evidence Act does not prevent him from doing so as proceedings before him are not a legal proceedings as defined in the Act. *Price v Emperor*, 17 Lah 593=38 P L R 1042.

6 (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

ies 36 Ch D 738 *South Staffordshire*
on sufficient grounds only (*Lerry v*
arly Practice, 1921 p 459 But where the
for the purpose of obtaining inspection
procedure the Court ought to refuse the
Amidas 5 Bom L R 865 This section
Asylum for Idiots v Hamdysides 22 T
to the litigation can also be inspected
inspection should be allowed with great
in order under this section is not open to
Evidence Act being a special Act dealing

with the subject matter of bankers books provisions of Criminal Procedure Code do not in
any way conflict Thus under s 6 bank has a statutory right to object to any order
directing inspection to be given of their books though the order is made under s 94 Cr
Pro Code Therefore such order of the Court without hearing the Bank is not binding upon
it A I R 1938 Bom 33

An order under this section should not be *ex parte* Notice to other party should be
given 141 Ind Cas 670=31 Bom L R 743—A I R 1932 Bom 428

7 (1) The costs of any application to the Court or a Judge under or
for the purposes of this Act and the costs
of anything done or to be done under an
order of the Court or a Judge made under or for the purposes of this
Act shall be in the discretion of the Court or Judge, who may further
order such costs or any part thereof to be paid to any party by the
bank if they have been incurred in consequence of any fault or improper
delay on the part of the bank

(2) Any order made under this section for the payment of costs in
or by a bank may be enforced as if the bank were a party to the
proceeding

(3) Any order under this section awarding costs may, on applica-
tion to any Court of Civil Judicature designated in the order, be
executed by such Court as if the order were a decree for money
passed by itself.

Provided that nothing in this subsection shall be construed
to derogate from any power which the Court or Judge making the
order may possess for the enforcement of its or his directions with
respect to the payment of costs

Notes.—This section corresponds to section 8 of the English Act

THE INDIAN BAR COUNCILS ACT, 1926.

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Qualification and admission of advocates

THE SCHEDULE

[THE INDIAN BAR COUNCILS ACT, 1926.]*

ACT NO XXXVIII OF 1926.

An Act to provide for the constitution of Bar Councils in British India and for other purposes

Received the assent of the Governor General on the 9th, September, 1926.

[Whereas it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners entitled to practise in such Courts, it is hereby enacted as follows —]*

have inadequate knowledge of local conditions and there are not wanting indications that a provincial bar would not readily submit to being governed by a body which would necessarily contain a majority of members insufficiently acquainted with its special needs and difficulties

Courts—The word Courts is not defined in this Act It means however the highest Courts

Scope—Legal practitioners cannot now be proceeded under inherent jurisdiction independently of the Act A I R 1930 All 225=(1930) A L J 402=82 A 619=125 Ind Cas 477

Preliminary

Short title extent application and commencement [1 (1) This Act may be called the Indian Bar Councils Act, 1926

(2) It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras, Bombay, Allahabad and Patna† and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897,‡ as the "Provincial Government" § may by notification in the "official Gazette" declare to be High Courts to which this Act applies

me into force at
tion in the "offi-
or any provisio-
force in respect
of any High Court to which this Act applies on such date as he may
by the notification appoint] ¶

* In British Burma the Title and Preamble have been omitted (vide G B Order of 1937)

† The words and Patna have been substituted in British India for the words 'Patna and Rangoon' by G I Order of 1937

‡ S. 3 of 1897

§ Governor

High Courts—In the first instance this Act applies to the High Courts of Judicature at

the Bar Council G O W N 1080

Commencement of the Act—So far as the six High Courts mentioned in para (2) are concerned sections 2 17 18 and 19 come into operation at once. As regards the remaining portion of the Act no notification has yet been published by the Governor General in Council

Interpretation

2 (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "advocate" means an advocate entered in the roll of advocates of [a High Court]* under the provisions of this Act.

†[(b) "Advocate-General" includes, where there is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate such officer as the Local Government may declare to be the Advocate-General for the purposes of this Act.

(c) "High Court" means a High Court to which this Act applies,] and

(d) "prescribed" means prescribed by rules made under this Act.
 "(2) In this Act 'the Provincial Government' means, in relation to any High Court, the Provincial Government of the Province in which the High Court has its principal seat" ‡

Notes—These definitions are for the purposes of this Act. Unless there be any repugnancy in the subject or context these meanings are to be applied.

Advocate—According to clause (4) of section 3 of the General Clauses Act "a barrister" means a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland. But an advocate under this section means an advocate in the roll of advocates of a High Court under the provisions of this Act.

Advocate General—The definition is for the purpose of this Act and it should not be extended to other Acts. "Advocate General" includes acting Advocate General and is entitled to right of pre audience in respect of all business. 33 Bom L R 1500 = 130 Ind Cas 793 A I R 1932 Bom 71 (F B)

Constitution of Bar [Council] §

Constitution and incorporation of Bar Councils

3 (1) For [every]|| High Court a Bar Council shall be constituted in the manner hereinafter provided

(2) [Every]|| Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable, and to contract,

* In British Burma for the words 'a High Court' substitute the word 'the High Court' (vide G B Order of 1937)

and shall by the name of the Bar Council of the High Court [for which it has been constituted,]* sue and be sued

Every High Court—A Council can be constituted for every High Court and not for every province

Body Corporate—It is a corporation aggregate like a trade union and is created by this Act. Perpetual succession a common seal and right to acquire and hold property are incidental to all corporations. A corporation aggregate *says Lord Coke* is only an abstraction and rest only in intendment and consideration of law. It is invisible and immortal it has no soul neither it is subject to the imbecilities of the body

Composition of Bar Councils 4 (1) [Every]† Bar Council shall consist of fifteen members, of whom—

(a) one shall be the Advocate General,

(b) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court, and

(c) ten shall be elected by the advocates of the High Court from amongst their number

(2) Of the elected members of [every]† Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to practise in the High Court [for which the Bar Council has been constituted] ‡

[(3) Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practise in the High Court in the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland]§

(4) There shall be a Chairman and Vice-Chairman of [each]† Bar Council elected by the Council in such manner as may be prescribed

Provided that the Advocates-General of Bengal Madras and Bombay shall be Chairman *ex-officio* respectively, of the Bar Councils constituted for the High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay

Sub clause (b)—We think it desirable to indicate clearly that Judges of the High Court may be represented on the Bar Council and have provided that two out of the four persons nominated by the Court may be Judges.—*Report of the Select Committee*

15 members four of
 ssible the Advocate
 The remaining eleven
 ld be elected by ad
 High Courts should
 determine how many of the eleven should be advocates entitled to practise on the original
 side The nominated members should ordinarily be advocates but it should be left
 to the High Courts to nominate Judges past and present.—*Statement of Objects and
 Reasons*

Advocates General—We think it is essential in view of the status of the Advocates General in the Presidency towns that they should be made *ex-officio* Chairman of the Bar Councils to which they respectively belong.—*Report of the Select Committee*

* For the words for which it has been constituted the words 'at Rangoon' have been substituted in Burma by G. B. Order of 1937

† In sub section (1) (2) and (4) for the word 'every' substitute the word 'the' (vide G. B. Order of 1937)

‡ The words within quotations have been substituted by G. B. Order of 1937

§ In British Burma sub section (2) has been omitted by G. B. Order of 1937

Sections 4 5 6, 7 and 8 —Ss 4 5 6 7 and 8 must be read together 163 Ind Cas 510=A I R 1936 Sind 75 (S B)

[5 (1) Notwithstanding anything contained in clause (c) of sub section (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court

Special provisions regarding constitution of first Bar Councils

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council]*

Advocates, vakils and pleaders etc.—The attorneys are excluded from the operation of this Act as the majority supported the view that the attorneys should have a completely separate organisation—*vide Bar Councils Report paras 6 and 10*

Tenure of office—The life of the first Bar Council is three years from the date of the

75 (S B)

6 (1) Rules, consistent with this Act, may be made to provide for the following matters, namely—

Power to make rules regarding constitution and procedure of Bar Councils

(a) the manner in which elections of members of the Bar Council shall be held the method of determining in accordance with the provisions of [sub sections (2) and (3)]† of section 4 the candidates who shall be declared to have been elected the manner in which the result of elections shall be published and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided,

(b) the terms of office of nominated and elected members of the Council

(c) the filling of casual vacancies in the Council,

(d) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat,

(e) the manner of election and the respective terms of office of the Chairman, [in cases where the Chairman is to be elected]‡ and of the Vice Chairman and

(f) any matter incidental or ancillary to any of the foregoing matters

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to amend or rescind any rules so made

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed

* In Burma section 51 has been omitted (*vide G B Order of 1937*)

† In Burma for the words sub sections () and (3) read sub section 2 (*vide G B Order of 1937*)

‡ In Burma the words within brackets have been omitted by G B Order of 1937

for the election has not less than thirty days before that date, been published in the ['official Gazette']* of the province or of each province as the case may be, in which the High Court exercises jurisdiction] †

(4) Rules made under clause (b) of sub section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined

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Power of Bar Councils to make
bye laws

7 The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters namely —

(a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary and the pay and allowances and other conditions of service of such officers and servants and

(b) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers or duties of the Council which may be delegated to such Committees

Notes — This section authorises the Bar Council which owes its origin to a statute to make bye laws consistent with this Act and consistent with the rules made under this Act

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Narain v Corpo

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Municipality 27 B 221

Admission and enrolment of advocates

8 (1) No person shall be entitled as of right to practise in [any High Court] † unless his name is entered in the roll of the advocates of the High Court maintained under this Act

* In British India for the words 'local official Gazette' the words 'official Gazette' have been substituted by G 1 Order of 1937

† In Burma for the words within brackets read the word 'Gazette' (vide G B Order of 1937)

‡ In Burma for any High Court read the High Court (vide G B Order of 1937)

[Provided that nothing in this sub-section shall apply to any attorney of the High Court]*

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(a) all persons who were, as advocates, [vakils]† or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof, and

(b) all other persons who have been admitted to be advocates of the High Court under this Act

Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Indian Stamp Act, 1899, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a), and in other cases such amount as may be prescribed

‡ [(3) Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely:—

(a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court, and (b) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier :

Provided that, for the purposes of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority

Provided that the Advocate-General shall have pre-audience over all other advocates, and King's Counsel shall have pre-audience over all advocates except the Advocate-General]

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made

(7) The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it

Clause (2)—In accordance with the opinion expressed by several High Courts the preparation and maintenance of the roll of advocates is entrusted to the High

* In Burma this proviso has been omitted by G. B. Order of 1937

† In Burma the word "vakils" has been omitted by G. B. Order of 1937

‡ Substituted by Act 13 of 1927

Court instead of to the Bar Council. Provision has also been made for the maintenance of the roll by the High Court and for the maintenance of a copy of it.

Select Committee

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represents
admission as
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9 (1) The Bar Council may, with the previous sanction of the High Court make rules to regulate the admission of persons to be advocates of the High Court.

Qualification and admission of advocates

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(2) In particular and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely —

(a) the qualifications to be possessed by persons applying for admission as advocates

(b) the form and manner in which applications shall be made to the High Court for admission

(c) the giving of notice by the High Court to the Bar Council of all such applications

(d) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant, and

(e) the charging of fees payable to the Bar Council in respect of enrolment

(3) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex

[(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application 'or to prescribe the conditions under which such persons shall be entitled to practise or plead *"]†

Cl. 13 (1) —

O W N 1050 = b Luck 615

Proviso — But the High Court has the power to refuse admission to any person otherwise qualified if it considers that he would be on other grounds an undesirable addition to the Bar — *Report of the Select Committee*. The clause practised in one or more of the

* Inserted by Act 13 of 1927

† In Burma this sub section has been omitted by G. B. Order of 1937.

Courts subordinate to the Allahabad High Court as used in the rules framed under s 9 means 'practised in one of the Courts in this province' A I R 1930 All 887=1930 A L J 839-128 Ind Cas 388

Clause (2) --This clause lays down the matters respecting which rules may be made

Clause (3) --In the case of *Miss Pegina Guha* 21 C W N 74 (F B) 24 C L J 382 a Full Bench of the Calcutta High Court held that a woman was not entitled to practise as a pleader. This disability was however taken away by Act 23 of 1923. This clause lays down the law as stated in Act 23 of 1923

C . . .

of the High Courts at Calcutta and Bombay to regulate absolutely the qualifications for admission to practise on the Original Side will remain unimpaired --*Report of the Select Committee*

Courts of Mysore are not Courts subordinate to the Allahabad High Court 1930 A L J 839-13 Ind Cas 388-A I R 1930 All 887

Misconduct

10 (1) The High Court may, in the manner hereinafter provided, Punishment of advocate for misconduct reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court) and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

Provision for costs and fine

order for costs against him or impose a fine not contemplated by the Act A I R 1926 All 623 52A 619 A I R 1930 All 685 125 Ind Cas 477=1930 A L J 402-A

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 the Court's disciplinary
 A. I. R. 1935 P. C. 164.
 suppression of truth or by deliberate
 26 Cr L J. 1180=A. I. R. 1935
 accompanied by moral delinquency is not

upon fairness or impartiality of
 fiction 54 A. 912=1932 A. L. J.
 be in accordance with the gravity
 name from roll of advocates for
 misconduct, the test is to see whether such misconduct makes advocate unworthy to
 remain member of honourable profession and unfit to be entrusted with responsible work
 of advocate Where advocate is convicted for submitting false return of income and for
 setting false defence his name must be struck off the roll A. I. R. 1934 Rang 33

In a proceeding against a legal practitioner it is open to the High Court to arrive at a
 different conclusion 1930 M W N 216 In a case where a counsel appears on behalf
 of the Bar Council, the petitioner should pay his fees 1930 M W N 216.

Even after compromise by a complainant and the advocate the Bar Council should
 enquire into the charge and come into a finding. 57 C 724=126 Ind Cas 558=A. I. R.
 1930 Cal 574 (F B).

An advocate must do everything in his power to verify the form of the *valalatnama* and
 he must not accept a *valalatnama* unless he is satisfied of the *bona fides* of the person who
 offers it to him A. I. R. 1937 Pat 433 (S B)=17 Pat L T 407=16 Pat. 468=170 Ind.
 Cas 339

Clause (2) — "Some misunderstanding appears to have arisen as to the object of provid-
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 should not dismiss complaint summarily unless satisfied that even if statements in
 no case for taking action 31 Bom L. R.=139
 I R 1932 Bom 199 In every case procedure laid
 I R 1928 All 439=26 A L J. 1039=29 C. L. J.
 as 214 When special power has been conferred

1934 411 898 It is no part of the duty of the High Court to impose penalties for mis conduct unconnected with the exercise of the profession which is either not punishable or has been or can be punished under the law of the land 36 Bom L R 1136 (F B) Where an advocate was convicted for submitting a false return of his income to the income-tax officer and for taking up a false defence and maintaining it even up to High Court, even though he knew such defences to be false it was held that his conduct involved moral turpitude and that his name should be struck off the roll of advocates A I R 1934 Rang 33=119 Ind Cas 856-12 Rang 110

11 (1) Where any case is referred for inquiry to the Bar Council Tribunal of Bar Council under section 10, the case shall be inquired into by a Committee of the Bar Council (hereinafter referred to as the Tribunal)

(2) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice [or Chief Judge]* of the High Court, and one of the members so appointed shall be appointed to be the President of the Tribunal

Tribunal—By this section the Chief Justice of the High Court or the Chief Judge of the High Court is empowered to appoint members of the Tribunal from amongst the members of the Bar Council Such Tribunal must not consist of more than 5 members
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12 (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under section 10

(2) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court which shall cause a copy thereof to be sent to the Bar Council

(3) On receipt of the finding the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned and to the Bar Council and to the Advocate-General, and shall afford the advocate concerned and the Bar Council and the Advocate General an opportunity of being heard before orders are passed in the case

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub section (3) and pass final orders thereon

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit

(6) The High Court may, of its own motion or on application made

* In Burma the words ' or Chief Judge ' have been omitted by G B Order of 1937

to it in this behalf, review any order passed under sub-section (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court, and when an advocate is removed from practice his name shall forthwith be struck off the roll, and the certificate of any advocate so suspended or removed shall be recalled

Notes — The alteration which we have made in this clause provide firstly, that the Advocate General shall have notice of and shall be entitled to appear at the hearing of every case before the High Court whether the inquiry has been made by a Tribunal of the Bar Council or by a District Court and secondly that the High Court shall have the power to review its orders. This power will enable it to accept a belated apology, if it thinks fit and remit or reduce the punishment. — *Report of the Select Committee*. It is submitted that the position of the Advocate General is very anomalous who by section 4 is the *ex officio* Chairman of the Bar Council and under section 11 can be appointed a member of the Tribunal

(F B) 131 Ind Cas 67 As regards correct procedure under s 12 vide A I R 1931 Bom 557-33 Bom L R 1215-135 Ind Cas 486-A I R 1932 Bom 102 The High Court will not ordinarily interfere with finding of fact arrived at by Tribunal based on credibility of witnesses 35 C W N 293=134 Ind Cas 1270-A I R 1931 Cal 680 (S B)

Sub section (1) — Where a case against an advocate for his illegal misconduct is referred for inquiry by the High Court to the District Judge the District Judge is not competent to delegate this inquiry to a subordinate Court 168 Ind Cas 392=38 Cr L J 664 A I R 1937 Sind 98 The Court's decision must rest not upon suspicion but upon legal grounds established by legal testimony 147 Ind Cas 1080=11 O W N 23=A I R 1934 Oudh 58 (F B) see also 58 M L J 635 (P O) In order to prevent a fee paid or
ld make it im-
cannot be said
147 Ind Cas

Sub section (2) — Although it is usual for the High Court to accept the findings of the Bar Tribunal upon charges of professional misconduct in the absence of any objection on the part of the Government Advocate yet the High Court is not bound to do so in every case A I R 1935 All 425 (F B)=1935 A L J 759=155 Ind Cas 1043 The High Court attaches great weight to the findings of Bar Tribunal 153 Ind Cas 1054=A I R 1935 All 503 (S B) A Bench of a High Court by majority is competent to reverse the finding of a Bar Council 159 Ind Cas 653 A I R 1935 All 1037=159 Ind Cas 653

Sub section (3) — H. L. C.

relating to misconduct before the Act costs can be ordered against advocate G I M L J 148 32 Cr L J 1085=51 M 857=A I R 1932 Mad 131 (F B)

Clause (c)—Power of review cannot be exercised with regard to order under Legal Practitioners Act s 41 A I R 1934 Oudh 140 (S B)

13 (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely—

(a) enforcing the attendance of any person and examining him upon oath,

(b) compelling the production of documents, and

(c) issuing commissions for the examination of witnesses

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court or, in the case of an officer of a Criminal or Revenue Court, of the Local Government

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of a Tribunal shall be those of the jurisdiction of the High Court [by which the Tribunal has been constituted]* and

(b) a Tribunal may send to any Civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the Civil Court shall serve such process or issue such commission as the case may be, and may enforce any such process as if it were a process for attendance or production before itself

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 134 of the Indian Evidence Act, 1872, and the provisions of that section shall apply accordingly

Clause (1)—By this clause the Tribunal is invested with the powers of Civil Court so far as enforcing the attendance of any person and examining him upon oath compelling the production of documents and issuing commissions for the examination of witnesses are concerned. The English Inns of Court which are voluntary societies do

his professional to this clause is ature at Bombay re attendance of ness and incon previous sanction re issuing a sum

* In Burma the words within brackets have been omitted by G B Order of 1937.

Miscellaneous

Right of advocates to practise

14 (1) An advocate shall be entitled as of right to practise—

[(a) subject to the provisions of sub section (4) of section 9, in the High Court of which he is an advocate, and]*

(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court in British India and before any other Tribunal or person legally authorized to take evidence, and

(c) before any other authority or person before whom such advocates is by or under the law for the time being in force entitled to practise

(2) Where rules have been made [by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, or in the case of a High Court for which a Bar Council has been constituted under this Act by such Bar Council]† under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions

[(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction]‡

Practice—It includes the right to appear plead and act *Laurentina v Dhuti*, (1925) Pat 766 Ex judge of High Court if entered in the roll of advocates has a right to appear in Courts A I R 1931 P C 12 = 35 C W N 321 = 60 M L J 179 = 33 Bom L R 409 = 12 P L T 169 (P C)

Any other Court in British India—We think the provisions of the Bill as introduced allow an advocate of the High Court to appear in the latter Court or by the Bar Council of such appearances. We think it reasonable in other High Courts unconditionally unless conditions are imposed by such rules, as we have re-drafted the clause accordingly — *Report of the Select Committee* The right of an advocate of a particular bar to appear in other High Court does not exist as a matter of right. Nor is there any question of reciprocity involved in the matter. The Chief Justice will apply his mind to the circumstances of the application and see whether good reasons have been made out for grant of permission in any particular case 167 Ind Cas 486—38 Cr L J 392 = 17 Pat L T 861 = A I R 1937 Pat 122

Sub Clause (e)—We have also made an addition to sub clause (1) to provide for certain cases which have been brought to our notice in which legal practitioners are at present entitled to appear before certain public officers or bodies not legally authorised to take evidence — *Report of the Select Committee*

* In Burma for clause (a) of sub section (1) substitute — (a) in the High Court and (i) vide G B Order of 1937)

† In sub section (2) for the words within brackets substitute the words 'by the Bar Council' in British Burma (i) vide G B Order of 1937)

‡ In British Burma omit sub section (3)—i) vide G B Order of 1937

15 [A Bar Council]* may, with the previous sanction of the High Court [for which it is constituted]† make rules consistent with this Act to provide for and regulate any of following matters, namely —

General power of Bar Councils to make rules

(a) the rights and duties of the advocates of the High Court and their discipline and professional conduct,

(b) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court,

(c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council,

(d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council

(e) the investment and management of the funds of the Bar Council, and

(f) any other matter in respect of which the High Court may require rules to be made under this section

Scope — This section makes provision for the rights and duties of the advocates of the

Vide Report of the Select Committee

16 The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto

Power to fix fees payable as costs

Notes — Under this section the High Court is to make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate. This section makes no mention whether reference is to be made to the Bar Council or not

Payment of fees to party's own legal advisers — Before the passing of the Legal

* In British Burma for 'A Bar Council' read 'The Bar Council' (vide G. B. Ord. of 1937)

† The words within brackets have been omitted in Burma (vide G. B. Order of 1935)

17 No suit or other legal proceeding shall lie against [a Bar Council]* or any Committee, Tribunal or member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder

Notes — We have inserted this clause in the usual form to provide indemnity for bona fide action taken by Bar Councils and Committees, Tribunals and members of Bar Councils — *Report of the Select Committee*

Liability of individual members — Corporation are not individually answerable for acts done in their corporate capacity from which detriment happens at least not without proof of malice *Harman v Tappenden* 1 East 555 *Rex v Wadham College*, 1 East 566 (n) All suits must be in the corporate name of the corporation and not in the name of any members or the Chairman or President *Santan v The Chairman* A W N 1908, 165 *Syed Incer Sahib v Venkatarama* 16 M 236

†[18 All rules made under this Act shall be published in the official Gazette of the province, or of each province, as the case may be, in which the High Court by which or with whose sanction the rules are made exercises jurisdiction]

Notes — This section makes provision for the publication of rules. These rules are to be published in the official Gazette of the province or the provinces over which the High Court exercises jurisdiction, as well as in the Assam Gazettes as well as in the official Gazette of the condition precedent to their coming into force A I R 1935 All 295 157 Ind. Cas 220

‡[19 (1) When sections 8 to 16 come into force in respect of any High Court, any enactment mentioned in the first column of the Schedule which is in force in any province in which the High Court exercises jurisdiction shall, for the purpose of its application to that province, be amended to the extent and in the manner specified in the second column of the Schedule

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed

* In Burma for the words "a Bar Council" read the words "the Bar Council" (*vide* G B Order of 1937)

† In Burma for section 18 substitute the following section 18 —

18 All rules made under this Act shall be published in the Gazette — *vide* G B Order of 1937

‡ In Burma for section 19 substitute the following section 19 —

19 (1) The enactments in the

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(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleadings' Act, 1920, except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an advocate of the High Court under this Act, and nothing in that Act shall be deemed to authorise the admission or enrolment of any person as a vakil or pleader of the High Court.

(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or by-law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act]

Notes.—The amendments mentioned in the Schedule will be effected in any

and are not saved by s 19(1) of the Bar Councils Act. 55 M. L. J. 551 (F. B.) = A. I. R. 1928 Mad 1182.

THE SCHEDULE.

(See section 19.)

AMENDMENT OF ENACTMENTS

Enactments amended	Extent and manner of amendment
The Legal Practitioners Act, 1879	(1) In section 4, after the words "with the permission of the Court" the words and figures "or, in the case of a High Court in respect of", subject to (2) "Royal Charter" Bar Councils [(3) "shall be added, namely — "and except as provided by section 36, nothing in this Act shall apply to persons enrolled as advocates of any High Court under
The Indian Stamp Act, 1899.	
The Madras Stamp (Amendment) Act, 1922	where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted
The Bengal Stamp (Amendment) Act, 1922	In "High Court" where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Indian Stamp (Amendment) Act, 1922.	In "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.
The Assam Stamp (Amendment) Act, 1922.	In Article 30 of Schedule IA after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted]*

* In Burma omit all except the first two entries—Fide G. B. Order of 1937.

THE BOILERS ACT (V OF 1923)

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2 Definitions	19 Appeals to Chief Inspector
3 Limitation of application	20 Appeals to appellate authority
4 Power to limit extent	21 Finality of orders
5 Appointment of Chief Inspectors and Inspectors	22 Minor penalties
6 Prohibition of use of unregistered or uncertificated boilers	23 Penalties for illegal use of boiler
7 Registration	24 Other penalties
8 Renewal of certificate	25 Penalty for tampering with register mark
9 Provisional orders	26 Limitation and previous sanction for prosecution
10 Use of boiler pending grant of certificate	27 Trial of offences
11 Revocation of certificate or provisional order	27A Central Boilers Board.
12 Alterations and renewals to boilers	28 Power to make regulations
13 Alterations and renewals to steam pipes	29 Power to make rules
14 Duty of owner at examination	30 Penalty for breach of rules
15 Production of certificates etc	31 Publication of regulations and rules
16 Transfer of certificates etc	32 Recovery of fees etc
17 Powers of entry	33 Applicability to the Crown
	34 Power to suspend in case of emergency
	35 Repeal of enactments

SCHEDULE

[THE INDIAN BOILERS ACT, 1923] *

ACT NO. V OF 1923

An Act to consolidate and amend the law relating to steam boilers

Received the assent of the G-G on the 23rd February, 1923

WHEREAS it is expedient to consolidate and amend the law relating to steam-boilers, It is hereby enacted as follows —

Short title, extent and commencement * [1. (1) This Act may be called the Indian Boilers Act, 1923]

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as "Central Government"† may, by notification in the "official Gazette"‡ appoint]

Notes—Under the Devolution Rules the regulation of boilers is a provincial subject subject to legislation by the Indian legislature. There are at present seven provincial Boiler Acts some of them were framed many years ago and are out of date, and all of them are inconsistent with each other, the result is that different rules are enforced in different provinces and the anomalous position has been reached that a boiler which is

* In Burma for section 1, substitute the following section 1 "1 This Act may be called the Boilers Act."

† The words "Central Government" have been substituted for the words "Governor General in Council" by G. I. Order of 1937

‡ The words "official Gazette" have been substituted for the words "Gazette of India" by G. I. Order of 1937.

allowed to work up to a certain pressure in one province can only be worked to a much lower pressure when transferred to another province. Further in the interest of safety a boiler requires regular inspection in whatever province it may be situated and it is wrong that in certain provinces no boiler law should be enforced at all. The object therefore of the present legislation is—

(a) to secure uniformity throughout India in all technical matters connected with boiler regulations e.g. standards of construction maximum pressure and

(b) to insist on the registration and regular inspection of all boilers throughout India.

This object can only be attained by an all India Act with uniform regulations throughout the country under the Devolution Rules as explained above it is the function of the Central Government to promulgate such an Act—*Statement of Objects and Reasons*

Extent—We note that there is local objection to the operation of the Bill being extended to British Baluchistan. Having regard to the objects with which the Bill was introduced we should prefer not to exclude British Baluchistan by statute. Should the Act prove unworkable there the powers of exemption provided in clause (4) can be brought into operation.—*Report of the Joint Committee*

Definitions

2 In this Act unless there is anything repugnant in the subject or context—

(a) 'accident' means an explosion of a boiler or steam-pipe or any damage to a boiler or steam pipe which is calculated to weaken the strength thereof so as to render it liable to explode,

[(aa) 'Board' means the Central Boilers Board constituted under Section 27A]*

(b) 'boiler' means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure† and includes any mounting or other fitting attached to such vessel, which is wholly or partly under pressure when steam is shut off,

(c) "Chief Inspector and Inspector mean respectively a person appointed to be a Chief Inspector and an Inspector under this Act

(d) 'owner' includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof,

(e) 'prescribed' means prescribed by regulations or rules made under this Act

(f) 'steam pipe' means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime-mover or other first user and includes any connected fitting of a steam pipe and

(g) structural alteration, addition or renewal shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting used for replacement is not inferior in strength efficiency or otherwise to the replaced part or fitting

Limitation of application

3 (1) Nothing in this Act shall apply in the case of any boiler or steam-pipe—

(a) in any steam ship as defined in section 3 of the Indian

* In British India after clause (a) the new clause (aa) has been substituted by Act VI of 1937

† The words 'for use outside such vessel' after this repealed by Act IX of 1939 been omitted

Steamships Act, 1884,* or in any steam-vessel as defined in section 2 of the Inland Steam-vessels Act, 1917, † or

(b) belonging to or under the control of His Majesty's Navy or the "Royal Indian Navy" ‡

(2) The "Safety Controlling Authority"§ may, by notification in the "official Gazette," || declare that the provisions of this Act shall not apply in the case of boilers or steam-pipes, or of any specified class of boilers or steam-pipes, belonging to or under the control of any railway administered by the 'Federal Railway Authority or by any Provincial Government '¶ or by any railway company as defined in clause (5) of section 3 of the Indian Railways Act, 1890 [In this sub-section "Safety Controlling Authority" has the same meaning as the Indian Railway Act, 1890]**

Sub Section (2) —The railways are not automatically excluded from the operation by the Act. The power to except them lies with the Governor General in Council

4 The 'Provincial Government' †† may, by notification in the 'official Gazette,' ‡‡ exclude any specified area from the operation of all or any specified provisions of this Act

Notes — Wales and ...

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5 (1) The 'Provincial Government' †† may appoint such persons as its thinks fit to be Inspectors [for the province] ‡‡ for the purposes of this Act, and may define the local limits within which each Inspector shall exercise the powers and perform the duties conferred and imposed on Inspectors by or under this Act

(2) The "Provincial Government" †† shall likewise appoint a person to be Chief Inspector for the province, who may, in addition to the powers and duties conferred or imposed on the Chief Inspector by

* VII of 1884

† I of 1917

‡ In British India for the words 'Royal Indian Marine Service' the words 'Royal Indian Navy' have been substituted by G. I. Order of 1937. In Burma read the words

... been substituted for the words
In Burma read the word 'Governor'
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Order of 1937. But in Burma read the word 'Gazette' for the words 'official Gazette'.

¶ In British India for the words 'by the Government' the words 'by the Federal Railway Board' the

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‡‡ The words within brackets have been omitted in Burma (vide G. B. Order of 1937)

or under this Act exercise any power or perform any duty so conferred or imposed on Inspectors

(3) Every Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code

Notes.—This section makes provision for the appointment of Inspectors and Chief Inspectors

6 Save as otherwise expressly provided in this Act, no owner of a boiler shall use the boiler or permit it to be used—

(a) unless it has been registered in accordance with the provisions of this Act,

*[(b) in the case of any boiler which has been transferred from one province to another, until the transfer has been reported in the prescribed manner,]

(c) unless a certificate or provisional order authorizing the use of the boiler is for the time being in force under this Act,

(d) at a pressure higher than the maximum pressure recorded in such certificate or provisional order,

(e) where the 'Provincial Government,'† has made rules requiring that boilers shall be in charge of persons holding certificates of competency, unless the boiler is in charge of a person holding the certificate required by such rules

Provided that any boiler registered, or any boiler certified or licenced, under any Act hereby repealed shall be deemed to have been registered or certified as the case may be, under this Act

Provided, further, that, until the expiration of twelve months from the commencement of this Act, nothing in this section shall be deemed to prohibit the use of any boiler in any local area in which the registration of, or a certificate or licence for the use of, a boiler was not previously required by law

Notes.—As the object of the Bill is to insist on the registration and regular inspection of all boilers throughout India this section prohibits the use of unregistered or uncertificated boiler

7 (1) The owner of any boiler which is not registered under the provisions of this Act may apply to the Inspector to have the boiler registered

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(2) by the prescribed fee
Inspector sub-section (1), the Inspector or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed

(3) On the said date the Inspector shall proceed to measure and examine the boiler and to determine in the prescribed manner the maximum pressure, if any, at which such boiler may be used and shall report the result of the examination to the Chief Inspector in the prescribed form

(4) The Chief Inspector, on receipt of the report, may—
(a) register the boiler and assign a register number thereto either forthwith or after satisfying himself that any structural

* Clause (b) has been omitted in Burma by G B Order of 1937
† In British India the words with in quotations have been substituted by G I Order of 1937 But in Burma for these words read the word 'Governor' (vide G B Order of 1937)

alteration, addition or renewal which he may deem necessary has been made in or to the boiler or any steam-pipe attached thereto, or

(b) refuse to register the boiler

Provided that where the Chief Inspector refuses to register a boiler, he shall forthwith communicate his refusal to the owner of the boiler together with the reasons therefor

(5) The Chief Inspector shall, on registering the boiler, order the issue to the owner of a certificate in the prescribed form authorising the use of the boiler for a period not exceeding twelve months at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act

(6) The Inspector shall forthwith convey to the owner of the boiler the orders of the Chief Inspector and shall in accordance therewith issue to the owner any certificate of which the issue has been ordered and, where the boiler has been registered, the owner shall within the prescribed period cause the register number to be permanently marked thereon in the prescribed manner

Notes—The object of this section is that all boilers which come within the definition of the term "boiler" shall be registered and a certificate shall be issued to the owner of the boiler. It is essential too that the Inspector should give the owner ten days notice of the issue of the certificate.

Objects and Reasons—We have refused to register a boiler because we think also there is some force there should be a power to issue a certificate or the refusal thereof. We think the provisional order should be issued by a small alteration in clause (9) —

Renewal of certificate

8 (1) A certificate authorising the use of a boiler shall cease to be in force—

(a) on the expiry of the period for which it was granted, or

(b) when any accident occurs to the boiler or

(c) when the boiler is moved, the boiler not being a vertical boiler the heating surface of which is less than two hundred square feet, or a portable or vehicular boiler, or

(d) when any structural alteration, addition or renewal is made in or to the boiler, or

(e) if the Chief Inspector in any particular case so directs, when any structural alteration, addition or renewal is made in or to any steam-pipe attached to the boiler, or

(f) on the communication to the owner of the boiler of an order of the Chief Inspector or Inspector prohibiting its use on the ground that it or any steam-pipe attached thereto is in a dangerous condition

(2) Where an order is made under clause (f) of sub-section (1), the grounds on which the order is made shall be communicated to the owner with the order

(3) When a certificate ceases to be in force the owner of the boiler may apply to the Inspector for a renewal thereof for such

period not exceeding twelve months as he may specify in the application

(4) An application under sub-section (3) shall be accompanied by the prescribed fee and on receipt thereof, the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed

Provided that, where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the Chief Inspector may dispense with the payment of any fee

(5) On the said date the Inspector shall examine the boiler in the prescribed manner, and if he is satisfied that the boiler and the steam-pipe or steam-pipes attached thereto are in good condition shall issue a renewed certificate authorising the use of the boiler for such period not exceeding twelve months and at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act

Provided that if the Inspector—

(a) proposes to issue any certificate—

(i) having validity for a less period than the period entered in the application, or

(ii) increasing or reducing the maximum pressure at which the boiler may be used, or

(b) proposes to order any structural alteration, addition or renewal to be made in or to the boiler or any steam-pipe attached thereto, or

(c) is of opinion that the boiler is not fit for use the Inspector shall, within forty-eight hours of making the examination, inform the owner of the boiler in writing of his opinion and the reasons therefor, and shall forthwith report the case for orders to the Chief Inspector

(6) The Chief Inspector, on receipt of a report under sub-section (5), may, subject to the provisions of this Act and of the regulations made hereunder, order the renewal of the certificate in such terms and on such conditions, if any, as he thinks fit, or may refuse to renew it

Provided that where the Chief Inspector refuses to renew a certificate, he shall forthwith communicate his refusal to the owner of the boiler, together with the reasons therefor

(7) Nothing in this section shall be deemed to prevent an owner of a boiler from applying for a renewed certificate therefor at any time during the currency of a certificate

Notes — We have added a sub clause after clause (1) providing that the reasons for making an order under clause (1) (c) and now (1) (f) are to be communicated to the owner

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in the discretion of the owner and, in the case where the certificate is lapsing by reason of an expiry of the period for which it was granted, we should merely penalise the owner by the application of clause (10) if he does not apply for renewal before the lapse. We have provided here again that the Chief Inspector shall communicate in writing to the owner his reasons for refusing to renew a certificate.—*Report of the Joint Committee*

9 Where the Inspector reports the case of any boiler to the Chief Inspector under sub-section (3) of section 7 or sub-section (5) of section 8, he may, if the boiler is not a boiler the use of which has been prohibited under clause (f) of sub-section (1) of section 8, grant to the owner thereof a provisional order in writing permitting the boiler to be used at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act pending the receipt of the orders of the Chief Inspector. Such provisional order shall cease to be in force—

(a) on the expiry of six months from the date on which it is granted, or
(b) on receipt of the orders of the Chief Inspector, or
(c) in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8, and on so ceasing to be in force shall be surrendered to the Inspector.

Notes—The object of the provisional order is to allow the owner to work the boiler in certain cases before the final orders of the Chief Inspector have been received. This provision should obviate any inconvenience which might be experienced by the owner if the Chief Inspector was on tour and the reference to him or the receipt of his order was delayed.—*Statement of Objects and Reasons*

We have made an addition to provide that the pressure entered in a provisional order is to be in accordance with the regulation made under the Act as in the case of a certificate issued under clauses (7) and (8).—*Report of the Joint Committee*

10. (1) Notwithstanding anything hereinbefore contained, when the period of a certificate relating to a boiler has expired, the owner shall, provided that he has applied before the expiry of that period for a renewal of the certificate, be entitled to use the boiler at the maximum pressure entered in the former certificate pending the issue of orders on the application

(2) Nothing in sub-section (1) shall be deemed to authorise the use of a boiler in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8 occurring after the expiry of the period of the certificate

11. The Chief Inspector may at any time withdraw or revoke any certificate or provisional order on the report of an Inspector or otherwise—

(a) if there is reason to believe that the certificate or provisional order has been granted erroneously, or
(b) if the boiler has been granted has sustained injury or has ceased to be in good condition, or
(c) where the "Provincial Government" has made rules requiring that boilers shall be in charge of persons holding certificates

Revocation of certificate or provisional order.

(a) if there is reason to believe that the certificate or provisional order has been granted erroneously, or

(b) if the boiler has been granted has sustained injury or has ceased to be in good condition, or

(c) where the "Provincial Government" has made rules requiring that boilers shall be in charge of persons holding certificates

* The words "Provincial Government" have been substituted for the words "Local Government" in British India by G. I. Order of 1937. But in Burma for the words within quotations read the word "Governor" (vide G. B. Order of 1937).

of competency, if the boiler is in charge of a person not holding the certificate required by such rules, or

(d) where no such rules have been made, if the boiler is in charge of a person who is not having regard to the condition of the boiler, in the opinion of the Chief Inspector competent to have charge thereof

Provided that where the Chief Inspector withdraws or revokes a certificate or provisional order on the ground specified in clause (d), he shall communicate to the owner of the boiler his reasons in writing for the withdrawal or revocation, and the order shall not take effect until the expiry of thirty days from the receipt of such communication

Notes — The Bill excluded altogether the provisions of several local Acts which pro-

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Committee

12 No structural alteration addition or renewal shall be made in or to any boiler registered under this Act unless such alteration, addition or renewal has been sanctioned in writing by the Chief Inspector

Alterations and renewals to boilers

13 Before the owner of any boiler registered under this Act makes any structural alteration, addition or renewal in or to any steam-pipe attached to the boiler, he shall transmit to the Chief Inspector a report in writing of his intention, and shall send therewith such particulars of the proposed alteration, addition or renewal as may be prescribed

Alterations and renewals to steam pipes

14 (1) On any date fixed under this Act for the examination of a boiler, the owner thereof shall be bound—

(a) to afford to the Inspector all reasonable facilities for the examination and all such information as may reasonably be required of him

(b) to have the boiler properly prepared and ready for examination in the prescribed manner; and

to submit to the Inspector for the registration of a boiler certificates and other parti-

(2) If the owner fails without reasonable cause, to comply with the provisions of sub-section (1), the Inspector shall refuse to make the examination and shall report the case to the Chief Inspector who shall unless sufficient cause to the contrary is shown, require the owner to file a fresh application under section 7 or section 8, as the case may

and may forbid him to use the boiler notwithstanding anything contained in section 10

15 The owner of any boiler who holds a certificate or provisional order relating thereto shall at all reasonable times during the period for which the certificate or order is in force, be bound to produce the same when called upon to do so by a District Magistrate Commissioner of Police or Magistrate of the first class having jurisdiction in the area in which the boiler is for the time being or by the Chief Inspector or by an Inspector or by any Inspector appointed under the Indian Factories Act, 1911,* or by any person specially authorised in writing by a District Magistrate or Commissioner of Police

Notes—The District Magistrate, Commissioner of Police or Magistrate of the first class having jurisdiction in the area in which the boiler is for the time being can compel the owner to produce the certificate

16 If any person becomes the owner of a boiler during the period for which a certificate or provisional order relating thereto is in force, the preceding owner shall be bound to make over to him the certificate or provisional order

Notes—The transfer of certificate is compulsory where transfer of boiler occurs

17 An Inspector may, for the purpose of inspecting or examining a boiler or any steam-pipe attached thereto or of seeing that any provision of this Act or of any regulation or rule made hereunder has been or is being observed at all reasonable times enter any place or building within the limits of the area for which he has been appointed in which he has reason to believe that a boiler is in use

18 (1) If any accident occurs to a boiler or steam-pipe, the owner or person in charge thereof shall, within twenty-four hours of the accident, report the same in writing to the Inspector. Every such report shall contain a true description of the nature of the accident and of the injury, if any, caused thereby to the boiler or to the steam-pipe or to any person, and shall be in sufficient detail to enable the Inspector to judge of the gravity of the accident

(2) Every person shall be bound to answer truly to the best of his knowledge and ability every question put to him in writing by the Inspector as to the cause nature or extent of the accident

Notes—A report of accidents must be made within 24 hours of the accident

19 Any person considering himself aggrieved by—

(a) an order made or purporting to be made by an Inspector in the exercise of any power conferred by or under this Act, or

(b) a refusal of an Inspector to make any order or to issue any certificate which he is required or enabled by or under this Act to make or issue

may, within thirty days from the date on which such order or refusal is communicated to him, appeal against the order or refusal to the Chief Inspector

* VII of 1911 now repealed by Act XXX of 1931

Notes — Provision is made in this section for appeals to Chief Inspector from an order of the Inspector

Appeals to appellate authority of the Chief Inspector—

20 Any person considering himself aggrieved by an original or appellate order

(a) refusing to register a boiler or to grant or renew a certificate in respect of a boiler, or

(b) refusing to grant a certificate having validity for the full period applied for or

(c) refusing to grant a certificate authorising the use of a boiler at the maximum pressure desired or

(d) withdrawing or revoking a certificate or provisional order, or

(e) reducing the amount of pressure specified in any certificate or the period for which such certificate has been granted, or

(f) ordering any structural alteration, addition or renewal to be made in or to a boiler or steam-pipe or refusing sanction to the making of any structural alteration addition or renewal in or to a boiler, may, within thirty days of the communication to him of such order, lodge with the Chief Inspector an appeal to an appellate authority to be constituted by the [Provincial Government]* under this Act.

Notes — An appeal lies from the decision of the Chief Inspector within 30 days

21 An order of an appellate authority under section 20 and, save as otherwise provided in sections 19 and 20, an order of the Chief Inspector or of an Inspector shall be final and shall not be called in question in any Court

Finality of orders

Notes — Where indeed a new duty or cause of action is created by statute, and a special jurisdiction out of the course of the common law is prescribed there is no ouster of the jurisdiction of the ordinary Courts for they never had any — *Maxwell* p 240

Minor penalties

22 Any owner of a boiler who refuses or without reasonable excuse neglects—

(i) to surrender a provisional order as required by section 9, or

(ii) to produce a certificate or provisional order when duly called upon to do so under section 15, or

(iii) to make over to the new owner of a boiler a certificate or provisional order as required by section 16,

shall be punishable with fine which may extend to one hundred rupees

Notes — *Mens rea* or a guilty mind is with some exceptions, an essential element in constituting a breach of the criminal law. The general rule is that unless the contrary is expressed *mens rea* enters into every offence. 68 L J Q B 31

23 Any owner of a boiler who, in any case in which a certificate or provisional order is required for the use of the boiler under this Act, uses the boiler either without any such certificate or order being in force or at a higher pressure than that allowed thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with an additional fine which may

Penalties for illegal use of boiler

* The words "Provincial Government" have been substituted in British India for the words "Local Government" by G I Order of 1937. But in Burma for the words within brackets read the word "Governor" (vide G I Order of 1937)

extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence

Other penalties

24 Any person who -

[(a) uses or permits to be used a boiler of which he is the owner and which has been transferred from one province to another without such transfer having been reported as required by section 6, or]*

(b) being the owner of a boiler fails to cause the register number allotted to the boiler under this Act to be marked on the boiler as required by sub-section (6) of section 7, or

(c) makes any structural alteration, addition or renewal in or to a boiler without first obtaining the sanction of the Chief Inspector when so required by section 12 or to a steam-pipe without first informing the Chief Inspector, when so required by section 13, or

(d) fails to report an accident to a boiler or steam-pipe when so required by section 18, or

(e) tampers with a safety valve of a boiler so as to render it inoperative at the maximum pressure at which the use of the boiler is authorised under this Act,

shall be punishable with fine which may extend to five hundred rupees

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25 (1) Whoever removes alters defaces renders invisible or

Penalty for tampering with
register mark

otherwise tampers with the register number marked on a boiler in accordance with the provisions of this Act or any Act repealed hereby, shall be punishable with fine which may extend to five hundred rupees

(2) Whoever fraudulently marks upon a boiler a register number which has not been allotted to it under this Act or any Act repealed hereby, shall be punishable with imprisonment which may extend to two years, or with fine or with both

26 No prosecution for an offence made punishable by or under

Limitation and previous
sanction for prosecutions

this Act shall be instituted except within six months from the date of the commission of the offence, and no such prosecution shall be instituted without the previous sanction of the Chief Inspector

Notes — We have reduced to six months the period within which a prosecution under the Act must be instituted — *Report of the Joint Committee*

27 No offence made punishable by or under the Act shall be

Trial of offences.

tried by a Court inferior to that of a Presidency Magistrate or a Magistrate of the first class

Notes — The trial of offences under this Act is entrusted to the experienced Magistrates

†27A (1) A Board to be called the Central Boilers Board shall be

Central Boilers Board

constituted to exercise the powers conferred by section 28

* In Burma clause (a) to section 24 has been omitted by G. B. Order of 1937

† This section has been inserted by Act VI of 1937. But this section is not in force in British Burma (vide Act VI of 1937, section 2)

(2) The Board shall consist of fourteen members namely —

[(a) a Chairman to be nominated by the 'Central Government *]

(1) one member to be nominated by each of the Provincial Governments * of Madras Bombay Bengal, the United Provinces, the Punjab Bihar the Central Provinces * and Berar, † Assam the North West Frontier Province Sind and Orissa

(c) one member, holding office for a period of three years, to be nominated alternately by the Provincial Government † of Delhi and the 'Provincial Government' † of Ajmer Merwara and

(d) one member to be nominated by the Chief Commissioner of Railways

(3) Any vacancy occurring in the Board otherwise than by the expiry of the term of office of the member referred to in clause (c) of sub section (2) shall be filled as soon as may be by a nomination made by the authority by whom the member vacating office was nominated

(4) The Board shall have full power to regulate by bye laws or otherwise its own procedure and the conduct of all business to be transacted by the Board.

(5) The powers of the Board may be exercised notwithstanding any vacancy in the Board.

Notes—The Government of India Act 1935 assigns the subject of Boilers to the concurrent field. The Government intend to place before the Legislature by 1st April a Bill which will enable them to legislate in that field from 1st April onwards. It is their intention to exercise executive authority so far as the regulations relating to boilers are concerned. So far as the regulations relating to boilers are concerned, they will be responsible. It is most undesirable from the point of view both of industry and of administration that there

VI of 1937

28 The Board † may by notification in the *Gazette of India* ‡

Power to make regulations

make regulations consistent with this Act for all or any of the following purposes, namely —

(a) for laying down the standard conditions in respect of material design and construction which shall be required for the purpose of enabling the registration and certification of a boiler under this Act

(aa) for prescribing the circumstances in which, the extent to which and the conditions subject to which variation for the standard conditions laid down under clause (a) may be permitted ||

(b) for prescribing the method of determining the maximum pressure at which a boiler may be used

(c) for regulating the registration of boilers prescribing the fees payable therefor the drawings specifications, certificates and

Order of 193)

(In British India clause (aa) to section 28 has been inserted by Act VI of 1937 and in Burma this clause is not in force)

particulars to be produced by the owner, the method of preparing a boiler for examination, the form of the Inspector's report thereon, the method of marking the register number, and the period within which such number is to be marked on the boiler,

(d) for regulating the inspection and examination of boilers and steam-pipes, and prescribing forms of certificates therefor, and†

(e) for ensuring the safety of persons working inside a boiler; and†

[(f) for providing for any other matter which is not, in the opinion of the "Board"* a matter of merely local or provincial importance]†

29. The "Provincial Government"† may, by notification in the "official Gazette,"§ make rules consistent with this Act and the regulations made thereunder for all or any of the following purposes, namely. —

(a) for prescribing the qualifications and duties of the Chief Inspector and of Inspectors|| for prescribing or constituting authorities to which they shall respectively be subordinate, and the limits of the administrative control to be exercised by such authorities,

(b) for regulating the transfer of boilers,

(c) for providing for the registration and certification of boilers in accordance with the regulations made under this Act;

(d) for requiring boilers to be in charge of persons holding certificates of competency, and for prescribing the conditions on which such certificates may be granted,

(e) for prescribing the times within which Inspectors shall be required to examine boilers under section 7 or section 8,

(f) for prescribing the fees payable for the issue of renewed certificates and the method of determining the amount of such fees in each case,

(g) for regulating inquiries into accidents,

(h) for constituting the appellate authority referred to in section 20, and for determining its powers and procedure,

(i) for determining the mode of disposal of fees, costs and penalties levied under this Act, and

[(j) generally to provide for any other matter]**

* For the words Governor General in Council the word Board has been substituted in British India. In Burma — vide

G. I.
at the

vincial
words

Order

† In clause (a) to section 29 after the word 'Inspector' the words "for regulating their salary, allowances and conditions of service" have been omitted in British India by G. I. Order of 1937. But in Burma this clause is to be read as if these words have not been omitted.

‡ In British India for the old clause (j) the new clause (j) has been substituted by G. I. Order of 1937. In Burma for the clause (j) read the following — (j) generally to provide for any other matter" (vide G. B. Order of 1937).

** After clause (j) proviso has been omitted in British India as well as in Burma — vide G. I. Order of 1937 and G. B. Order of 1937 respectively.

Notes — Rules made under an Act which prescribe that they shall be laid before Parliament for a prescribed number of days during which period they may be annulled

enactment is impossible the subordinate provisions must give way and probably the rule would be treated as subordinate to the section *Maxwell* p 33 citing (1894) A C p 360

the said Act by the authority substituted for the Governor General in Council by the Indian Boilers (Amendment) Act of 1937 (VI of 1937) and shall continue to be in force until superseded by rules and regulations made under the said sections of the said Act by the Central Boilers Board — *File Act XVII of 1937*

30 Any regulation or rule made under section 28 or section 29 may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees

31 (1) The power to make regulations and rules conferred by sections 28 and 29 shall be subject to the condition of the regulations and rules being made after previous publication

(2) Regulations and rules so made shall be published [in the Gazette of India and the local official Gazette, respectively]* and, on such publication shall have effect as if enacted in this Act

32 All fees, costs and penalties levied under this Act shall be recoverable as arrears of land-revenue

33 Save as otherwise expressly provided this Act shall apply to boilers and steam-pipes belonging to the Crown

†**[34** (1) The "Provincial Government ‡ may by notification in the "official Gazette § exempt from the operation of this Act subject to such conditions and restrictions as it thinks fit any boilers or classes or types of boilers used exclusively for the heating of buildings or the supply of hot water

(2) In case of any emergency, the 'Provincial Government ‡ may by general or special order in writing exempt any boiler or steam-pipe from the operation of all or any of the provisions of this Act]

* In Burma the words with in brackets have been omitted by G.O. Order of 1907
† Old section 34 has been re-numbered as sub-section (1) and sub-section

run at the words 'Provi
1917 But in Burma for th
in the Gazette the words
17 But in Burma

35 [Repeal of enactments] (Repealed by Act 12 of 1927)

THE SCHEDULE
(Repealed by Act 12 of 1927)

THE CANTONMENTS ACT, 1924.

ACT NO II OF 1924.

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THE CANTONMENTS ACT, 1924

ACT NO II OF 1924

An Act to consolidate and amend the law relating to the administration of cantonments

Received the assent of the Governor-General on the 16th February, 1924

WHEREAS it is expedient to consolidate and amend the law relating to the administration of cantonments, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title extent and commencement

1 (1) This Act may be called the Cantonments Act, 1924

[(2) It extends to the whole of British India including British Baluchistan].*

(3) The [Central Government]† may, by notification in the [official Gazette,]‡ direct that this Act, or any provisions thereof which he may specify, shall come into force on such date as he may appoint in this behalf

Notes — It is proposed to take power to which contain a substantial civil population dependent upon the military administration circumstances do not fully exist the ad vested in the hands of the Commanding Officer of the cantonment who for the purpose of the Act cantonment which it will be reg essentially

Act extends to the whole of British India
either
shall
half —

Vide s. 1 of Act XXIV of 1936

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(i) "Assistant Health Officer" means the medical officer appointed by the "Officer Commanding-in-Chief, the Command"§ to be the Assistant Health Officer for a cantonment,

(ii) "Board" means a Cantonment Board constituted under this Act,

* S. 1. B Order of 1937
words within brackets
words within brackets

Sections

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 214 Power to enter land adjoining land where work is in progress
 245 Breaking into premises
 246 Entry to be made in the day time
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General Penalty Provisions

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 (*Repealed*)

THE CANTONMENTS ACT, 1924

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CHAPTER I

PRELIMINARY.

Short title, extent and commencement

1. (1) This Act may be called the Cantonments Act, 1924

[(2) It extends to the whole of British India including British Baluchistan.]*

(3) The [Central Government]† may, by notification in the [official Gazette],‡ direct that this Act, or any provisions thereof which he may specify, shall come into force on such date as he may appoint in this behalf.

Notes — It is proposed to take cantonments which contain a substantial portion of the population dependent upon the military establishment, and where those circumstances do not fully exist, and the purpose of the Act is to provide for the better administration of such cantonments.

Amendment Act XXIV of 1936 — This Act extends to the whole of British India including British Baluchistan but excluding Burma. This Act will come into force at once but the Central Government may by notification in the official Gazette, direct either generally or in respect of a particular cantonment that a specified section or sections shall not take effect until such date as he may by a like notification appoint in this behalf — vide s. 1 of Act XXIV of 1936

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(i) "Assistant Health Officer" means the medical officer appointed by the "Officer Commanding-in-Chief, the Command"§ to be the Assistant Health Officer for a cantonment;

(ii) "Board" means a Cantonment Board constituted under this Act,

* See Order of 1937, within brackets within 1

(iii) "brigade area" means one of the brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes for all or any of the purposes of this Act any area which the [Central Government]* may, by notification in the [official Gazette]† declare to be a brigade area for such purpose or purposes.

†(iv) "building" means a house, out-house, stable, latrine, shed, hut or other roofed structure whether masonry, brick, wood, mud, metal or other material and any part thereof, and includes a well and a wall (other than a boundary wall not exceeding eight feet in height and not a building on a street) but does not include a tent or, other portable and temporary shelter, §

"(vi) "casual election" means an election held to fill a casual vacancy,

(vii) "casual vacancy" means a vacancy occurring otherwise than by efflux of time in the office of an elected member of a Board,"

[(viii) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the "Central Government" may, by notification in the "official Gazette,"† declare to be a Command for all or any of the purposes of this Act,]‡

[(ix) "Officer Commanding the station"§ means the military officer for the time being in command of the forces in a cantonment, or, if that officer is the Officer Commanding the District, "or Officer Commanding-in-Chief, the Command"*** the military officer who would be in command of those forces in the absence of the Officer Commanding the district "and Officer Commanding-in-Chief, the Command"***,]††

(x) "dairy" includes any farm, cattle-shed, milk-store, milk-shop or other place from which milk is supplied or in which milk is kept for purposes of sale or is manufactured for sale into butter, ghee, cheese or curds, and, in relation to a dairyman who does not occupy any premises for the sale of milk, includes any place in which he keeps the vessels used by him for the storage or sale of milk,

(xi) "dairyman" includes the keeper of a cow, buffalo, goat, ass or other animal, the milk of which is offered or is intended to be

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follow-

ecture,

for whatever purpose or of whatever material constructed or any part thereof, and includes a well but does not include a tent or other portable and temporary shelter

§ In British India the following clause (i) which is in force in Burma has been omitted by Act 21 of 1936 —

(v) "Cantonment Authority" means a Board or, in the case of a cantonment where a Board has not been constituted or has ceased to exist, the Officer Commanding the station "

‡ In British Burma clause (viii) has been omitted by G. B. Order of 1937.

* Substituted by Act VII of 1925

** Inserted by Act 17 of 1932

†† In British Burma insert the following clause (ix) —

(ix) "Officer Commanding in Chief the Command," means the General officer commanding the Forces in Burma (vide G. B. Order of 1937)

offered for sale for human consumption, and any purveyor of milk and any occupier of a dairy

(xi) 'entitled consumer' means a person in a cantonment who is paid from the Defence Services Estimates and is authorised by general or special order of the [Central Government]* to receive a supply of water for domestic purposes from the military Engineer Services or the Public Works Department on such terms and conditions as may be specified in the order †

(xii) 'Executive Engineer' means the Public Works officer of that grade, or 'the Officer of the Military Engineer Services ‡ of the corresponding grade, having charge of the military works in a cantonment [or where more than one such officer has charge of the military works in a cantonment such one of those officers as the Officer Commanding the station, may designate in this behalf]§ and includes the officer of whatever grade in immediate executive engineering charge of a cantonment.

(xiii) 'Executive Officer' means the person appointed under this Act to be the Executive Officer of a cantonment.

(xiv) 'Health Officer' means the senior executive medical officer in military employ on duty in a cantonment. ||

(xv) "hut" means any building, no material portion of which above the plinth level is constructed of masonry or of square timber framing or of iron framing ;

(xvi) "infectious disease" means cholera, leprosy, enteric fever, plague, influenza, venereal disease, mic or infectious disease, which the [Central Government]* may, by notification in the [official Gazette]* declare to be an infectious or contagious disease for the purposes of this Act.

(xvii) "inhabitant", in relation to a cantonment, or local area, means any person ordinarily residing or carrying on business or owning or occupying immoveable property therein, and in case of a dispute means any person declared by the District Magistrate to be an inhabitant.

(xix) "intoxicating drug" means opium, ganja, bhang, charas and any preparation or admixture thereof, and includes any other intoxicating substance, or liquid which the [Central Government]* may, by notification in the [official Gazette,]* declare to be an intoxicating drug for the purposes of this Act.

(xx) "market" includes any place where persons assemble for the purpose of selling meat, fish, fruit, vegetables, live stock or any other article of food.

* Substituted by G I Order of 1937. In these clauses which are in force in Burma read 'Governor in place of Local Government' and Gazette in place of local official Gazette respectively.

† Clause (xi) has been inserted by Act 24 of 1936. This clause is not in force in British Burma or in those areas which have been excluded.

‡ Substituted by Act VII of 1925.

§ The words within brackets have been inserted only for British India by Act 24 of 1936.

"(xxa) 'Military Estates Officer' means the officer appointed by the [Central Government]* to perform the duties of the Military Estates officer under rules made under clauses (a) and (b) of sub-section (2) of section 280,"†

(xxi) 'military officer', means—

(a) a person who, being an officer within the meaning of the Army Act‡ or the Indian Army Act, 1911§ or the Air Force Act "or the Indian Air Force Act 1932,"† is commissioned and in pay as an officer doing military or air force duty with His Majesty's military or air forces or is an officer doing such duty in any arm, branch or part of those forces, or

(b) a person doing military or air force duty as a warrant officer with either of those forces or with any arm, branch, or part thereof, whether he is or is not an officer within the meaning of the Army Act‡ or the Indian Army Act, 1911,§ or the Air Force Act, "or the Indian Air Force Act, 1932," †

(xxii) 'nuisance' includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing, or which is or may be dangerous to life or injurious to health or property,

(xxiii) 'occupier' includes an owner in occupation of, or otherwise using, his own land or building,

[(xxiv) "Officer Commanding the District" means the officer commanding any one of the districts into which India is for military purposes for the time being divided or any brigade area which does not form part of any such district, or any area which the [Central Government]* may, by notification in the [official Gazette]* declare to be such a district for all or any of the purposes of this Act,]‡

"(xxiva) 'Officer Commanding the station' means the military officer for the time being in command of the forces in a cantonment, or, if that officer is the [Officer Commanding the district or]‡ Officer Commanding-in-Chief, the Command, the military officer who would be in command of those forces in the absence of [the Officer Commanding the District and]‡ Officer Commanding-in-Chief, the Command,"§

(xxv) "ordinary election" means an election held to fill a vacancy in the office of an elected member of a Board arising by efflux of time,

(xxvi) 'owner' includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or an agent or trustee, or who would so receive the rent or to be entitled to receive it if the building or land were let to a tenant,

(xxvii) "party wall" means a wall forming part of a building and used or constructed to be used for the support or separation of ad-

* Substituted by G. I. Order of 1937. In Burma read the word 'Governor' in place of the words within brackets and the word 'Gazette' for the words 'Gazette of India' respectively. † In Burma the words within brackets have been omitted by G. B. Order of 1937. ‡ Inserted in British India by Act XII of 1935.

§ In Burma the words within brackets have been omitted by G. B. Order of 1937. ‡ Inserted in British India by Act XII of 1935.

joining buildings belonging to different owners, or constructed or adapted to be occupied by different persons ,

(xxviii) "private market" means a market which is not maintained by a "Board" and which is licenced by a "Board" under the provisions of this Act ,

(xxix) "private slaughter-house" means a slaughter-house which "Board" is not maintained by a "Board" and which is licensed by a "Board" under the provisions of this Act ,

(xxx) "public market" means a market maintained by a "Board" ,*

(xxxi) "public place" means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not ,

(xxxii) "public slaughter-house" means a slaughter-house maintained by a "Board" , *

(xxxiii) a person is deemed to reside in a cantonment if he maintains therein a house which is at all times available for occupation by himself or his family even though he may himself reside elsewhere provided that he has not abandoned all intention of again occupying such house either by himself or his family '†

(xxxiv) "shed" means a slight or temporary structure for shade or shelter ,

(xxxv) "slaughter house" means any place ordinarily used for the slaughter of animals for the purpose of selling the flesh thereof for human consumption ,

(xxxvi) "soldier" means a person who is a soldier or airman within the meaning of the Army Act† or the Air Force Act, or is subject to the Indian Army Act, 1911,§ and who is not a military officer ,

(xxxvii) "spirituous liquor" means any fermented liquor, any wine, or any alcoholic liquid obtained by distillation or the sap of any kind of palm tree, and includes any other liquid containing alcohol, which the [Central Government]** may, by notification in the [official Gazette],†† declare to be a spirituous liquor for the purposes of this Act ,

(xxxviii) "street" includes any way, road, land, square, courts, alley, "or passages" ‡‡ in a c. and whether built upon or n way and also the road-way c

* Substituted by Act 24 of 1936 In Burma and in excluded areas read 'Cantonment Authority' .

† Inserted in British India by Act 21 of 1936

‡ 44 & 45 Vict , c 58

§ VIII of 1911

|| In British Burma after the words Indian Army Act 1911 insert ' or the Burma Army Act '—vide G B Order of 1937

* In British India the words 'Central Government' have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' (vide G B Order of 1937

** Certain words after this repealed by Act 7 of 1925 have been omitted

†† In British India the words 'official Gazette' have been substituted by G I Order of 1937 In Burma for these words read the word 'Gazette' (vide G B Order of 1937

‡‡ The words 'or passages' have been substituted by Act 24 of 1936 in British But in British Burma for the words within quotations read the words 'passag open space' .

(xxxviii) "vehicle" means a wheeled conveyance of any description which is capable of being used on a street, and includes a motor-car, motor-lorry, motor-omnibus, cart, locomotive, tram-car, hand-car, truck, motor-cycle, bicycle tricycle, and rickshaw.*

(xxxix) "water-work" includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, water-trucks, sluices, mains, pipes, culverts, hydrants, stand-pipes, conduits, and all machinery, lands, buildings, bridges and things, used for, or intended for the purpose of, supplying water to a cantonment, [and

(xl) 'year' means the year commencing on the first day of April]*

Street - Open space between two houses owned by petitioner is not street 158
Ind Cas 858 = 36 Cr L J 1475 = 37 P L R 236 = A I R 1935 Lah 808

CHAPTER II

DEFINITION AND DELIMITATION OF CANTONMENTS

3 (1) The 'Central Government'†† may, by notification in the "official Gazette," § declare any place or places in which any part of His Majesty's regular forces or regular air force is quartered or which, being in the vicinity of any such place or places is or are required for the service of such forces to be a cantonment for the purposes of this Act and of all other enactments for the time being in force, and|| may, by a like notification, declare that any cantonment shall cease to be a cantonment

(2) The 'Central Government'†† may by a like notification, define the limits of any cantonment for the aforesaid purposes

[(3) When any place is declared a cantonment for the first time, the Central Government may until a Board is constituted in accordance with the provisions of this Act, by order make any provision which appears necessary to him either for 'the administration of the Board'] ¶

Notes - Areas which are not actually contiguous but which lie in close proximity can also be included - *See notes under section 4*

4 (1) The "Central Government"†† may, by notification in the "official Gazette," § declare its intention to include within a cantonment any local area situated in the** vicinity thereof or to exclude from a cantonment any local area comprised therein

* In British India the word 'and' after this has been omitted and clause \L has been added by Act 24 of 1936. But in Burma the word 'and' has been retained and clause \L has been omitted.

† In British India the words 'Central Government' have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' (*vide* G B Order of 1937).

‡ Certain words after this have been omitted by C I order of 1937 and G B order of 1937.

§ In British India the words 'official Gazette' have been substituted by G I Order of 1937.

|| of 1936

(2) Any inhabitant of a cantonment or local area in respect of which a notification has been published under sub-section (1) may, within six weeks from the date of the notification, submit in writing to the 'Central Government' * through the Officer Commanding-in-Chief, the Command an objection to the notification, and the Central Government * shall take such objection into consideration

(3) On the expiry of six weeks from the date of the notification, the 'Central Government' * may,† after considering the objections, if any, which have been submitted under sub section (2), by notification in the "official Gazette,"‡ include the local area in respect of which the notification was published under subsection (1), or any part thereof, in the cantonment or, as the case may be, exclude such area or any part thereof from the cantonment

Notes —Before the word 'vicinity' the word 'immediate' has been omitted by Act 26 of 1927. The reason for the omission is stated thus: "According to strict construction the expression 'immediate vicinity' might be held to connote actual contiguity. The omission of the word 'immediate' is necessary in order to allow of the inclusion in a cantonment of areas which are not actually contiguous but which lie in close proximity. This follows the wording of section 3 and it is doubtful whether it was ever intended to make a distinction of the kind imputed between the two sections."—*Statement of Objects and Reasons*

5 When, by a notification under section 4, any local area is included in a cantonment, such area shall thereupon become subject to this Act and to all other enactments for the time being in force throughout the cantonment and to all notifications, rules, regulations, bye-laws, orders and directions issued or made thereunder

6 (1) When, by a notification under section 3, any cantonment ceases to be a cantonment and the local area comprised therein is immediately placed under the control of a local authority, the balance of the cantonment fund and other property vesting in the [Board]§ shall vest in such local authority, and the liabilities of the [Board]§ shall be transferred to such local authority.

(2) When in like manner any cantonment ceases to be a cantonment and the local area comprised therein is not immediately placed under the control of a local authority, the balance of the cantonment fund and other property vesting in the [Board]§ shall vest in His Majesty, and the liabilities of the [Board]§ shall be transferred to the [Central Government] ||

Notes —This section makes provision for cantonment fund in existence before the area is placed under the control of a local authority

* In British India the words 'Central Government' have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' (vide G B Order of 1937)

† Certain words after their have been omitted by G I Order of 1937 and G B Order, 1937

‡ The words 'official Gazette' have been substituted by G I Order of 1937 in British India. In Burma read the word "Gazette" for the words within quotations (vide G B Order of 1937)

§ substituted by Act 24 of 1936. In Burma and in Central Government * have been substituted for the word 'Board' by G I Order of 1937. But in British Burma for the word 'Board' read the word 'Authority' (vide G B Order of 1937)

7 (1) When, by a notification under section 4, any local area forming part of a cantonment ceases to be under the control of a particular [Board]* and is immediately placed under the control of some other local authority, such portion of the cantonment fund and other property vesting in the [Board]* and such portion of the liabilities of the [Board]* as the [Central Government]† may, by general or special order, direct, shall be transferred to that other local authority

(2) When, in like manner, any local area forming part of a cantonment ceases to be under the control of a particular [Board]* and is not immediately placed under the control of some other local authority such portion of the cantonment fund and other property vesting in the [Board]* shall vest in His Majesty, and such portion of the liabilities of the [Board]* shall be transferred to the [Central Government],‡ as the [Central Government]† may by general or special order, direct

Notes —The primary effect of the dissolution of a corporation without provision for re-incorporation is to destroy the corporation altogether. Its life is ended its franchise is withdrawn its powers are abrogated and its functions cease. It is no longer a public institution. All offices are destroyed and the public property may be disposed of by the Legislature as state property —*Aiyanger's Municipal Corporation* p. 13

8 Any cantonment fund or portion of a cantonment fund or other property of a [Board]* vesting in His Majesty under the provisions of section 6 or section 7 shall be applied in the first place to satisfy any liabilities of the [Board]* transferred under such provisions to the [Central Government]‡ and in the second place for the benefit of the inhabitants of the local area which has ceased to be a cantonment or, as the case may be, part of a cantonment

Notes —Even when a corporation is dissolved the rights of third parties either as creditors or as holding contractual obligations cannot be impaired or destroyed either by supersession or dissolution. The duty of this payment or performance devolves upon the territory succeeding to the old corporation —*Aiyanger's Municipal Corporation* p. 13

9 The [Central Government]§ may|| by notification in the [official Gazette]* exclude from the operation of any part of this Act the whole or any part of a cantonment, or direct that any provision of this Act shall in the case of any cantonment specified in the notification in which there is no Board apply with such modifications as may be so specified

* The word Board has been substituted by Act 21 of 1936. In Burma and in

been substituted for the words but in British Burma for these

1 substituted by G. I. Order of for these words (1116 G. B.

Order of 1933)

§ In British India the words with n brackets have been substituted by G. I. Order of 1937. In Burma read the words Governor for these words (1116 G. B. Order of 1937)

|| Certain words after this omitted by G. I. order 1937 and G. B. order of 1937

* In British India the words with n brackets have been substituted by G. I. Order of 1937. In Burma read the word Gazette (1116 G. B. Order of 1937)

CHAPTER III

[Boards]* AND CANTONMENT BOARDS

[Boards]*

Cantonment Board and Executive Officer

⁴[10 (1) For every cantonment there shall be a Cantonment Board and an Executive Officer

†[11 Every Board shall, by the name of the place by reference to which the cantonment is known, be a body corporate having perpetual succession and a common seal with power to acquire and hold property both moveable and immoveable and to contract and shall, by the said name, sue and be sued

†[12 (1) The Executive Officer of every cantonment shall be appointed by the "Central Government"† or by such persons as the "Central Government"† may authorise in this behalf, from the service of the Executive Officers constituted by rules made under section 280 :

Provided that an Executive Officer appointed before the commencement of the Cantonments (Amendment) Act, 1936, shall, unless the 'Central Government'† otherwise directs in any case, be deemed to have been duly appointed in accordance with this sub section

(2) Not less than half the cost of the salary of the Executive Officer shall be paid by the 'Central Government'† and the balance from the cantonment fund

Provided that the salary of an Executive Officer appointed before the commencement of the Cantonments (Amendment) Act, 1936, shall, until the "Central Government"† otherwise directs, continue to be paid from the source from which it was being paid at the commencement of the said Act

(3) The Executive Officer shall be the Secretary of the Board and of every Committee of the Board but shall not be a member of the Board or of any such Committee

†[13 (1) Cantonments shall be divided into three classes, namely —
 (i) class I cantonments, in which the civil population exceeds ten thousand,
 (ii) class II cantonments in which the civil population exceeds two thousand and five hundred, but does not exceed ten thousand, and

(iii) class III cantonments, in which the civil population does not exceed two thousand and five hundred

Provided that the "Central Government"† may, by notification in the "official Gazette,"† place in class II any cantonment in the North-West Frontier Province or in British Baluchistan which if it

7 (1) When, by a notification under section 4, any local area forming part of a cantonment ceases to be under the control of a particular [Board]* and is immediately placed under the control of some other local authority, such

Disposal of cantonment fund when area ceases to be included in a cantonment

portion of the cantonment fund and other property vesting in the [Board]* and such portion of the liabilities of the [Board],* as the [Central Government]† may, by general or special order, direct, shall be transferred to that other local authority

(2) When, in like manner, any local area forming part of a cantonment ceases to be under the control of a particular [Board]* and is not immediately placed under the control of some other local authority such portion of the cantonment fund and other property vesting in the [Board]* shall vest in His Majesty, and such portion of the liabilities of the [Board]* shall be transferred to the [Central Government],‡ as the [Central Government]† may, by general or special order, direct

Notes—The primary effect of the dissolution of a corporation without provision for re incorporation is to destroy the corporation altogether. Its life is ended its franchise is withdrawn its powers are abrogated and its functions cease. It is no longer a public institution. All offices are destroyed and the public property may be disposed of by the Legislature as state property.—*Aiyanger's Municipal Corporation* p 13

8 Any cantonment fund or portion of a cantonment fund or other property of a [Board]* vesting

Application of funds and property transferred under sections 6 and 7

in His Majesty under the provisions of section 6 or section 7 shall be applied in the first place to satisfy any liabilities of the [Board]* transferred under such provisions to the [Central Government]‡ and in the second place for the benefit of the inhabitants of the local area which has ceased to be a cantonment or, as the case may be, part of a cantonment

Notes—Even when a corporation is dissolved the rights of third parties either as creditors or as holding contractual obligations cannot be impaired or destroyed either by supersession or dissolution. The duty of this payment or performance devolves upon the territory succeeding to the old corporation.—*Aiyanger's Municipal Corporation* p 13

9 The [Central Government]§ may|| by notification in the [official

Limitation of operation of Act

Gazette]¶ exclude from the operation of any part of this Act the whole or any part of a cantonment, or direct that any provi-

sion of this Act shall in the case of any cantonment specified in the notification in which there is no Board apply with such modifications as may be so specified

* The word Board has been substituted by Act 24 of 1936. In Burma and in

have been substituted for the words but in British Burma for these

1937 But in British Burma read the word Government substituted by G I Order of 1937 for these words (vide G B

§ In British India the words within brackets have been substituted by G I Order of 1937. In Burma read the words Governor for these words (vide G B Order of 1937)

|| Certain words after || is omitted by G I order 1937 and G B order of 1937

¶ In British India the words within brackets have been substituted by G I Order of 1937. In Burma read the word Gazette (vide G B Order of 1937)

CHAPTER III

[BOARDS]* AND CANTONMENT BOARDS

[Boards]*

Cantonment Board and Executive Officer

†[10] (1) For every cantonment there shall be a Cantonment Board and an Executive Officer

†[11] Every Board shall, by the name of the place by reference to which the cantonment is known, be a body corporate having perpetual succession and a common seal with power to acquire and hold property both moveable and immovable and to contract and shall by the said name, sue and be sued

†[12] (1) The Executive Officer of every cantonment shall be appointed by the "Central Government"† or by such persons as the "Central Government"† may authorise in this behalf, from the service of the Executive Officers constituted by rules made under section 280 :

Provided that an Executive Officer appointed before the commencement of the Cantonments (Amendment) Act, 1936, shall, unless the "Central Government"† otherwise directs in any case, be deemed to have been duly appointed in accordance with this sub section

(2) Not less than half the cost of the salary of the Executive Officer shall be paid by the "Central Government"† and the balance from the cantonment fund

Provided that the salary of an Executive Officer appointed before the commencement of the Cantonments (Amendment) Act, 1936, shall, until the "Central Government"† otherwise directs, continue to be paid from the source from which it was being paid at the commencement of the said Act

(3) The Executive Officer shall be the Secretary of the Board and of every Committee of the Board but shall not be a member of the Board or of any such Committee

†[13] (1) Cantonments shall be divided into three classes namely —
 (i) class I cantonments, in which the civil population exceeds ten thousand
 (ii) class II cantonments, in which the civil population exceeds two thousand and five hundred, but does not exceed ten thousand, and

(iii) class III cantonments, in which the civil population does not exceed two thousand and five hundred

Provided that the "Central Government"† may, by notification in the "official Gazette,"† place in class II any cantonment in the North-West Frontier Province or in British Baluchistan which if it

In Burma and in Nepal

were situated elsewhere would be a class I cantonment, or place in class III any such cantonment which if it were situated elsewhere would be a class II cantonment

(2) For the purposes of sub-section (1) the civil population shall be calculated in accordance with the latest of official census, or, if the Central Government,* by general or special order, so directs, in accordance with special census taken for the purpose

(3) In class I cantonments the Board shall consist of the following members, namely —

(a) the Officer Commanding the station or, if the "Central Government" * so directs in respect of any cantonment such other military officer as may be nominated in his place by the Officer Commanding in Chief the Command

(b) a Magistrate of the first class nominated by the District Magistrate,

(c) the Health Officer,

(d) the Executive Engineer,

(e) four military officers nominated by name by the Officer Commanding the station by order in writing

(f) seven members elected under this Act

(4) In class II cantonments, the Board shall consist of the following members, namely —

(a) the Officer Commanding the station or if the "Central Government" * so directs in respect of any cantonment, such other military officer as may be nominated in his place by the Officer Commanding-in-Chief, the Command

(b) a Magistrate of the first class nominated by the District Magistrate,

(c) the Health Officer,

(d) the Executive Engineer,

(e) (i) in cantonments of which the civil population exceeds seven thousand five hundred three military officers,

(ii) in cantonments of which the civil population exceeds five thousand but does not exceed seven thousand five hundred, two military officers

(iii) in cantonments of which the civil population does not exceed five thousand and in cantonments which the "Central Government" * by notification under the proviso to sub-section (1), has placed in class II, whatever be the population one military officer, nominated by name by the Officer Commanding the station by order in writing,

(f) such number of members elected under this Act as is equal to the number of members constituted or nominated by or under clauses (b) to (e)

(5) In class III Cantonments the Board shall consist of the following members namely —

(a) the Officer Commanding the station, or if the "Central Government" * so directs in respect of any cantonment, such other military officer as may be nominated in his place by Officer Commanding-in-Chief, the Command,

* The words within quotations have been substituted by G. I. Order of 1927

(b) one military officer nominated by name by the Officer Commanding the station by order in writing ,

(c) one member elected under this Act

(6) The Officer Commanding the station may, if he thinks fit, with the sanction of the Officer Commanding-in-Chief, the Command, nominate in place of any military officer whom he is empowered to nominate under clause (c) of sub-section (3), clause (c) of sub-section (4), or clause (c) of sub-section (5), any person, when in the service of the "Crown" or not who is ordinarily resident in the cantonment or in the vicinity thereof

(7) Every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the 'Central Government' * in the official Gazette *

§14 (1) Notwithstanding anything contained in section 13, if the 'Central Government' * is satisfied—

(a) that, by reason of military operations, it is necessary, or

(b) † that, for the administration of a cantonment, it is desirable,

to vary the constitution of the Board in any cantonment under this section, the "Central Government" * may, by notification in the "official Gazette" * make a declaration to that effect

(2) Upon the making of a declaration under sub-section (1), the Board and the cantonment shall consist of the following members, namely, —

(a) the Officer Commanding the station ,

(b) one military officer nominated by name by the Officer Commanding the station by order in writing ,

(c) one member, not being a person in the service of the Government nominated by the Officer Commanding the station

(3) Every nomination of a member of a Board constituted under this section, and every vacancy in the membership thereof, shall be notified by the 'Central Government' * in the "official Gazette" *

(4) The term of office of a Board constituted by a declaration under sub-section (1) shall not ordinarily extend beyond one year .

Provided that the "Central Government" * may from time to time by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time

Provided also that the 'Central Government' * shall forthwith direct that the term of office of such Board shall cease if, in the opinion of the "Central Government" * the reasons stated in the declaration whereby such Board was constituted, or its term of office was extended, have ceased to exist

(5) When the term of office of a Board constituted under this section has expired or ceased, the Board shall be replaced by the former Board which, but for the declaration under sub-section (1), would have continued to hold office, or, if the term of office of such former Board has expired, by a Board constituted under section 13]†

* The words within quotations have been substituted by G. I. Order of 1937

† Certain words at the beginning of clause (b) repealed by G. I. Order of 1937 have been omitted

" " " " by Act 24 of 1936, s. 5 In

every cantonment there shall

were situated elsewhere would be a class I cantonment, or place in class III any such cantonment which if it were situated elsewhere would be a class II cantonment

(2) For the purposes of sub section (1), the civil population shall be calculated in accordance with the latest of official census, or if the Central Government,* by general or special order, so directs, in accordance with special census taken for the purpose

(3) In class I cantonments the Board shall consist of the following members, namely —

(a) the Officer Commanding the station or, if the "Central Government" * so directs in respect of any cantonment such other military officer as may be nominated in his place by the Officer Commanding-in-Chief the Command,

(b) a Magistrate of the first class nominated by the District Magistrate,

(c) the Health Officer

(d) the Executive Engineer

(e) four military officers nominated by name by the Officer Commanding the station by order in writing

(f) seven members elected under this Act

(4) In class II cantonments, the Board shall consist of the following members, namely —

(a) the Officer Commanding the station or, if the "Central Government" * so directs in respect of any cantonment, such other military officer as may be nominated in his place by the Officer Commanding-in-Chief, the Command

(b) a Magistrate of the first class nominated by the District Magistrate

(c) the Health Officer,

(d) the Executive Engineer,

(e) (i) in cantonments of which the civil population exceeds seven thousand five hundred three military officer,

(ii) in cantonments of which the civil population exceeds five thousand but does not exceed seven thousand five hundred, two military officers

(iii) in cantonments of which the civil population does not exceed five thousand and in cantonments which the "Central Government" * by notification under the proviso to sub section (1), has placed in class II, whatever be the population one military officer nominated by name by the Officer Commanding the station by order in writing,

(f) such number of members elected under this Act as is equal to the number of members constituted or nominated by or under clauses (b) to (e)

(5) In class III Cantonments, the Board shall consist of the following members namely —

(a) the Officer Commanding the station or if the "Central Government" * so directs in respect of any cantonment, such other military officer as may be nominated in his place by Officer Commanding-in-Chief, the Command,

* The words within quotations have been substituted by G. I. Order of 1937

(1) one military officer nominated by name by the Officer Commanding the station by order in writing,

(c) one member elected under this Act

(6) The Officer Commanding the station may, if he thinks fit, with the sanction of the Officer Commanding-in-Chief, the Command, nominate in place of any military officer whom he is empowered to nominate under clause (c) of sub-section (3) clause (c) of sub-section (4), or clause (c) of sub-section (5), any person when in the service of the "Crown" * or not who is ordinarily resident in the cantonment or in the vicinity thereof

(7) Every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the 'Central Government' * in the official Gazette *

§[14 (1) Notwithstanding anything contained in section 13, if the 'Central Government' * is satisfied—

(a) that by reason of military operations, it is necessary, or

(1) † that for the administration of a cantonment, it is desirable,

to vary the constitution of the Board in any cantonment under this section, the 'Central Government' * may, by notification in the 'official Gazette' * make a declaration to that effect

(2) Upon the making of a declaration under sub-section (1), the Board and the cantonment shall consist of the following members, namely —

(a) the Officer Commanding the station,

(b) one military officer nominated by name by the Officer Commanding the station by order in writing,

(c) one member, not being a person in the service of the Government nominated by the Officer Commanding the station

(3) Every nomination of a member of a Board constituted under this section, and every vacancy in the membership thereof, shall be notified by the 'Central Government' * in the 'official Gazette' *

(4) The term of office of a Board constituted by a declaration under sub-section (1) shall not ordinarily extend beyond one year

Provided that the 'Central Government' * may from time to time by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time

Provided also that the 'Central Government' * shall forthwith direct that the term of office of such Board shall cease if, in the opinion of the 'Central Government' * the reasons stated in the declaration whereby such Board was constituted, or its term of office was extended, have ceased to exist

(5) When the term of office of a Board constituted under this section has expired or ceased, the Board shall be replaced by the former Board which but for the declaration under sub-section (1), would have continued to hold office, or, if the term of office of such former Board has expired, by a Board constituted under section 13] †

* The words within quotations have been substituted by C. I. Order of 1937

† Certain words at the beginning of clause (b) repealed by G. I. Order of 1937 have been omitted

Notes on sections 10 to 14 —While agreeing that military interests in cantonments and that therefore s must continue to provision should be all cantonments, other words, that

there should be a Board containing an elected element in every cantonment, and (b) that statutory provision should also be made whereby the detailed administration of bazar areas (other than small regimental bazars) should be left as far as possible to the elected representatives of the civil population thereby relieving the official members of the Board of much work in which they are not directly interested. We have given effect to these conclusions in five new sections for sections 10 to 14 of the Act. In every cantonment there provides that in cantonments he Board, while retaining ion to the civil population he "Corporation sole" now prevailing for a Board of three members one of whom is to be elected. We recognise that, in the case of—(a) military operations or (b) serious administrative troubles, it may be

11 *Governor to decide whether cantonment Board shall be constituted* —The Governor of any cantonment that a cantonment like notification, order that any Board

1) Every Board shall, by the name of the Board of the place by reference to which the cantonment is known, be a body corporate having perpetual succession a common seal with power to acquire and hold property both moveable and immovable and to contract and shall by the said name, sue and be sued

(2) In the case of any cantonment where there is no Board the Cantonment Authority shall be a corporation sole by the name of the Cantonment Authority of the place by reference to which the cantonment is known and as such Cantonment Authority shall have perpetual succession and an official seal with power to acquire and hold property both ne, sue and be sued every cantonment shall may authorise in this be the Secretary, but

shall not be a member thereof

Provided that, in the case of any cantonment where there is a Board the Governor may direct that the Executive Officer may be appointed by the Board subject to such conditions as the Governor may impose

14 *Constitution of Cantonment Board* —(1) Every Board shall consist of the following members, namely —

- (a) the Officer Commanding the station,
- (b) a Magistrate of the first class nominated by the District Magistrate,
- (c) the Health Officer,
- (d) the Executive Engineer,
- (e) such military officers not exceeding four in number as may be nominated by

vicinity thereof, to represent any interest or community not otherwise represented on the Board,

(f) such number of members elected under this Act as is equal to the number of members constituted or nominated by or under clauses (b) to (e)

Provided that, in the case of any cantonment—

(a) in which the total civil population is, according to the latest census less than two thousand and five hundred in number.

(b) [Omitted]

therein

(2) Every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the Governor in the Gazette."

difficult to continue the administration of cantonments under the normal system of Boards proposed by us and we therefore have made provisions in section 14 that the Central Government on his own initiative may replace the Board in any cantonment by a Board consisting of two official members and one non-official nominated member.—*Report of the Select Committee*

15 (1) Save as otherwise provided in this section, the term of office of a member of a Board shall be three years and shall commence from the date of the notification of his election or nomination under [sub-section (7) of section 13],* or from the date on which the vacancy has occurred in which he is elected or nominated, whichever date is later.

[Provided that the Central Government may, when satisfied that it is necessary in order to avoid administrative difficulty extend the term of office of all the elected members of a Board by such period, not exceeding one year, as he thinks fit]†

(2) The term of office of an *ex-officio* member of a Board shall continue so long as he holds the office in virtue of which he is such a member

(3) The term of office of a member elected to fill a casual vacancy shall commence from the date of election, and shall continue so long only as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred

(4) An outgoing member shall, unless the "Central Government ‡ otherwise directs, continue in office until the election or nomination of his successor is notified under sub-section (2) of section 14

(5) Any outgoing member may, if qualified be re-elected or renominated

Notes.—Like municipal councillors a member of a Cantonment Board holds office for a term of three years. — a member like a
it is duly made
being holding the

Filling of vacancies
The office of an elected member of a Board shall be filled by an ordinary election to be held on such date as the 'Central Government ‡ may, by notification in the [official Gazette]§ direct

(2) A casual vacancy shall be filled by a casual election the date of which shall be fixed by the Central Government ‡ by notification in the [official Gazette,]§ and shall be as soon as may be after the occurrence of the vacancy

Provided that no casual election shall be held to fill a vacancy occurring within three months of any date on which the vacancy will occur by efflux of time, but such vacancy shall be filled at the next ordinary election

Notes.—In case of casual vacancy it must be filled up as soon as it conveniently may be by the election or appointment as the case may be of a person thereto

* The words "official Gazette" have been substituted for the words "local official Gazette" by G. I. Order of 1937. In Burma for these words read the word "Gazette" (vide G. I. Order of 1937)

Notes on sections 10 to 14—While agreeing that military interests in cantonments must predominate if the area of each cantonment is taken as a whole and that therefore the local bodies responsible for the administration of cantonments must continue to contain an official majority we consider—(a) that statutory provision should be made for some representative of non official interest in all cantonments instead of only in a limited number as at present—in other words, that there should be a Board containing an elected element in every cantonment and (b) that statutory provision should also be made whereby the detailed administration of bazar areas (other than small regimental bazars) should be left as far as possible to the elected representatives of the civil population thereby relieving the official members of the Board of much work in which they are not directly interested. We have given effect to these conclusions in five new sections for sections 10 to 14 of the Act. In section 10 we have laid down the general principle that in every cantonment there should be a Board incorporated under section 11. Section 13 provides that in cantonments with a civil population of 2 500 upwards the membership of the Board while retaining the official majority of one should vary from 9 to 15 in proportion to the civil population. In smaller cantonments the section provides in place of the Corporation sole now prevailing for a Board of three members one of whom is to be elected. We recognise that in the case of—(a) military operations or (b) serious administrative troubles it may be

11 Governor to decide whether cantonment Board shall be constituted—The Governor may by notification in the Gazette order in respect of any cantonment that a cantonment Board shall be constituted therein and may by a like notification order that any Board so constituted shall cease to exist.

12 Incorporation of Cantonment Authority—(1) Every Board shall by the name of the Board of the place by reference to which the cantonment is known be a body corporate having perpetual succession a common seal with power to acquire and hold property both moveable and immoveable and to contract and shall by the said name, sue and be sued.

(2) In the case of any cantonment where there is no Board the Cantonment Authority shall be a corporation sole by the name of the Cantonment Authority of the place by which the cantonment is known. The Authority shall have and hold property both moveable and immoveable and shall sue and be sued. Every cantonment shall have a Secretary who may authorise in this behalf the Secretary but shall not be a member thereof.

Provided that in the case of any cantonment where there is a Board the Governor may direct that the Executive Officer may be appointed by the Board subject to such conditions as the Governor may impose.

14 Constitution of Cantonment Board—(1) Every Board shall consist of the following members namely—

- (a) the Officer Commanding the station
- (b) a Magistrate of the first class nominated by the District Magistrate,
- (c) the Health Officer
- (d) the Executive Engineer
- (e) such military officers not exceeding four in number as may be nominated by the Officer Commanding the station by order in writing.

Provided that the Officer Commanding the station may if he thinks fit, with the sanction of the Officer Commanding in Chief the Command nominate in place of any military officer whom he is empowered to nominate under this clause any person whether in the service of the Government or not, who is ordinarily resident in the cantonment or in the vicinity thereof to represent any interest or community not otherwise represented on the Board.

(f) such number of members elected under this Act as is equal to the number of members constituted or nominated by or under clauses (b) to (e).

Provided that in the case of any cantonment—
(a) in which the total civil population is, according to the latest census less than two thousand and five hundred in number

(b) [Omitted]

therein

(2) Every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the Governor in the Gazette

Notes—The resignation binds the giver of it and cannot be withdrawn even with the consent of the council. *P. v. W. in Corporation* 14 Q. B. D. 909. When the condition in sub-section (1) is fulfilled the seat becomes vacant but in the meantime the resigning member is not entitled to act. *Leese v. Leese*, (1892) 1 Q. B. 346.

President and Vice President 20. (1) The 'Officer Commanding the station' * [if a member of the Board.]† shall be the President of the Board.

[Provided that when a military officer holding the office of President ceases to be the Officer Commanding the station * merely by reason of a temporary absence from the station on duty or on station leave, or during the transfer of his head quarters to a hill station, he shall not vacate the office of President.]‡

"(2) Where the Officer Commanding the station is not a member of the Board the military officer nominated in his place under clause (a) of sub-section (3), sub-section (4) or sub-section (5) of section 13 shall be the President of the Board."§

Term of office of Vice President 21. [(1) The term of office of a Vice-President shall be three years or the residue of his term of office as a member, whichever is less.]]

(2) A Vice-President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant.

Notes—A Vice-President who is elected by members of the Board can hold office during the life of the Board which is three years.

Duties of President 22. (1) It shall be the duty of the President of every Board—

(a) unless prevented by reasonable cause, to convene and preside at all meetings of the Board and to regulate the conduct of business thereat;

(b) to exercise supervision and control over the financial and executive administration of the Board;

(c) to perform all the duties and exercise all the powers specifically imposed or conferred on the President by or under this Act; and

(d) subject to any restrictions, limitations and conditions imposed by this Act, to exercise executive power for the purpose of carrying

* Substituted by Act 7 of 1925.

† The words within brackets have been inserted by Act 24 of 1936 for British India and British Baluchistan only. These words have been omitted in Burma and in excluded areas.

‡ Added by Act 26 of 1927.

§ The new sub-section (2) has been substituted for British India for the following sub-section (2) which is in force in Burma—

(2) There shall be a Vice-President of every Board elected from among the members at a meeting thereof.

out the provisions of this Act and to be directly responsible for the fulfilment of the purposes of this Act

(2) The President may, by order in writing, empower the Vice-President to exercise all or any of the powers and duties referred to in clause (c) of sub-section (1) other than any power duty or function which he is by resolution of the Board expressly forbidden to delegate

(3) The exercise or discharge of any powers, duties or functions delegated by the President under this section shall be subject to such restrictions limitations and conditions, if any, as may be laid down by the President and to the control of and to revision by, the President

(4) Every order made under sub section (2) shall forthwith be communicated to the Board and to the [Officer Commanding-in-Chief the Command] *

Clause (a) of Sub section (1) —The President has a right to preserve order in a meeting He can exclude disorderly persons from the meeting *Lucas v Mason* L R 10 Ex 215 *Wooding v Orle*, 9 C & P 1 *Dolyle v Falconer* L R 1 P C 846

Sub section (2) —The provisions of the statute must be carefully observed otherwise the delegation would be invalid 5 B H C R 125

Sub section (3) —*Idem* 37 C 885

Duties of Vice President

23 It shall be the duty of the Vice-President of every Board—

(a) in the absence of the President and unless prevented by reasonable cause, to preside at meetings of the Board and when so presiding to exercise the authority of the President under sub section (1) of section 22

(b) during the incapacity or temporary absence of the President or pending his appointment or succession to perform any other duty and exercise any other power of the President and

(c) to exercise any power and perform any duty of the President which may be delegated to him under sub section (2) of section 22

Notes —In the absence of the President the Vice President is entitled to preside at a meeting He can also exercise the powers of the President when a valid delegation is made or when the President is temporarily absent

24 The Executive Officer shall perform all the duties imposed upon him by or under this Act, and shall be responsible for the custody of all the records of the [Board]† and shall arrange for the performance of such duties relative to the proceedings of the Board or of any Committee of the Board or of any Committee of Arbitration constituted under this Act, as those bodies may respectively impose on him and shall comply with every requisition of the [Board]† on any matter pertaining to the administration of the cantonment

25 The Executive Officer may, in cases of emergency, direct the execution of any work or the doing of any act which would ordinarily require the sanction of the [Board]† and the immediate execution or doing of which is in his opinion necessary for the service

* Substituted by Act XXXV of 1926

† The word Board has been substituted by Act 21 of 1936 In Burma and in excluded areas read Cantonment Authority

or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the cantonment fund

Provided that—

(a) he shall not act under this section without the previous sanction of the President or, in his absence, of the Vice President

(b) he shall not act under this section in contravention of any order of the [Board]† prohibiting the execution of any particular work or the doing of any particular act, and

(c) he shall report forthwith the action taken under this section and the reasons therefor to the [Board]‡

Elections

26 (1) [The Board or where a Board is not constituted in any place declared by notification under sub-section (1) of section 3 to be a cantonment, the

Electoral rolls

Officer Commanding the station]‡ shall prepare and publish an electoral roll showing the names of persons qualified to vote at elections to the Board. Such roll shall be prepared revised and finally published in such manner and on such date in each year as the Central Government § may by rule prescribe

(2) Every person whose name appears in the final electoral roll shall, so long as the roll remains in force, be entitled to vote at an election to the Board, and no other person shall be so entitled

(3) When a cantonment has been divided into wards, or the inhabitants into classes, the electoral roll shall be divided into separate lists for each ward or class as the case may be

(4) If a new electoral roll is not published in any year on the date prescribed, the Central Government § may direct that the old electoral roll shall continue in operation until the new roll is published

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27 (1) The following persons shall if not otherwise disqualified, be entitled to be enrolled as electors, namely —

Qualification of electors

(a) every person who in any year has, on or before such date as

* Before this the words where there is a Board have been omitted by Act 24 of 1936. In Burma and in excluded areas these words are retained

† Substituted by Act 24 of 1936. In Burma and in excluded areas read Cantonment Authority

‡ The words within brackets have been substituted by Act 24 of 1936. In Burma and in excluded areas for the words within brackets read the following words: Where a Board is to be constituted in any cantonment otherwise than in accordance with the proviso to sub-section (1) of section 14 the Cantonment Authority

§ The words within quotations have been substituted in British India by G. I. Order of 1937. In Burma read the word Governor (vide G. B. Order of 1937)

may be fixed by the 'Central Government' * in this behalf by notification in the "official Gazette" † (hereinafter in this section referred to as the aforesaid date), been assessed directly and on his own account to taxes under this Act (other than octroi, toll or terminal tax), the aggregate value whereof is not less than such amount as the "Central Government" * may by rule prescribe, and who on the aforesaid date is not in arrears in the payment of any such tax,

(b) every person who has for a period of not less than twelve months immediately preceding the aforesaid date resided in the cantonment and on the aforesaid date—

(i) is the owner or the mortgagee in possession or the lessee of any building or land in the cantonment, of an annual value calculated in such manner, and of not less than such amount, as the "Central Government" * may by rule prescribe, or

(ii) is carrying on any business in the cantonment from which he derives an annual income calculated in such manner, and of not less than such amount, as the "Central Government" * may by rule prescribe, or

(iii) "has passed the matriculation or other equivalent examination" ‡ of any University established by law in [British India], § or

(iv) is a person whose name is entered on the current electoral roll of the constituency of which the cantonment forms part for the purposes of the "Central or Provincial Legislatures, or" ||

(v) is a retired or pensioned officer, whether commissioned or non-commissioned, of His Majesty's forces,

(c) every person who has, 'for' ** a period of not less than twelve months immediately preceding the aforesaid date, resided in the cantonment and has 'for' † that period been assessed to income-tax

(2) A person, notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the aforesaid date—

(i) is not a British subject, or

(ii) is less than 21 years of age, or

(iii) has been adjudged by a competent Court to be of unsound mind, or

(iv) is an undischarged insolvent, or

(v) has been sentenced by a Criminal Court to imprisonment for a term exceeding "two years" ** or to transportation†† "for an offence

* The words "Central Government" are

British India

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India

Order of 1937

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are substituted by G. I. Order of 1937 in vernacular for the words within quotations

are substituted by G. I. Order of 1937 in British the words within quotations (vide G. B.

British India for the words 'is within quotations read the words

|| In British India sub-clause (iv) has been numbered as sub-clause (i) and the new sub

clauses (ii) to (v) have been numbered as sub-clauses (ii) to (vi) respectively. (Vide

†† In British India the words within quotations after the word 'transportation' have

been added by Act 24 of 1936. In Burma omit these words

which is declared by the Central Government to be such as to unfit him to become an elector* or has been sentenced by Criminal Court for any offence under Chapter IXA of the Indian Penal Code

Provided that the 'Central Government'† may by order in writing remove any disqualification incurred by a person under clause (v)

* Provided further that any disqualification incurred by a person under clause (i) shall terminate on the lapse of three years from the expiry of the sentence or order ‡

(3) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in clauses (i), (iii), (ii) and (v) of sub-section (2), his name shall be removed from the electoral roll unless in the case referred to in clause (i), the disqualification is removed by the 'Central Government' †

Clause (a) of Sub section (1) — The payment must be by the rate payers own act
P v Mayor of Briggworth 10 A & I 66 A person whose tax is below the taxable minimum does not become qualified by payment of minimum tax 38 C 501=15 C W
 586-13 C L J 471

Sub section (4) Clause (ii) — Attainment of 21 years is sufficient on the date of election
vide Powell v Brailly 18 C B N S 65 *Hargreaves v Hopper* C P D 195 *Harford v Lymshej* (1893) 1 Q B 852

28 (1) Save as hereinafter provided, every person, not being
 Qualification for being a "a person in the military or civil service of
 member of the Board the Crown in India" § whose name is
 entered on the electoral roll of a cantonment shall be qualified for election as a member of the Board in that cantonment

(2) No person shall be qualified for election or nomination as a member of a Board, if he—

(a) has been dismissed from "the service of the Crown" || and is debarred from re-employment therein, or is a dismissed servant of "a Board or an authority which, before the commencement of the Cantonments (Amendment) Act, 1936, exercised and performed the powers and duties of a Cantonment Authority under this Act," ¶

(b) is debarred from practising as a legal practitioner by order of any competent authority,

(c) holds any place of profit in the gift or at the disposal of the Board, or is a** police officer, or is the servant or employer of a member of the Board, or

* In British India after the word elector the following words have been omitted by Act 24 of 1936 or has been ordered to find security for good behaviour under the Code of Criminal Procedure, 1938 But these words have been retained in Burma

† The words Central Government have been substituted by G I Order of 1937 in British India In Burma read the word 'Governor for the words within quotation (Vide G B Order of 1937)

‡ In British India this second proviso has been added by Act 24 of 1936 But in British Burma this proviso is not in force

§ The words within quotations have been substituted in British India by Act 24 of 1936 In Burma for these words read a stipendiary Magistrate or a military officer or sold **

|| of 1937

1936
 .. British India by G I Order
 ent service '
 in British India by Act 24 of
 ment Authority '
 been omitted

(d) is interested in a subsisting contract made with, or in work being done for, the Board except as a shareholder (other than a director) in an incorporated company, or

• '(dd) is an officer or servant, permanent or temporary of a Board, or'

(e) is disqualified under any other provision of this Act

Provided that—

(i) any of the disqualifications referred to in clauses (a) and (b) may be removed by an order of the 'Central Government'[†] in this behalf, and

(ii) a person shall not be deemed to have any interest in such a contract or work as is referred to in clause (d) by reason only of his having a share or interest in—

(a) any lease or sale or purchase of immoveable property or any agreement for the same or

(b) any agreement for the loan of money or any security for the payment of money only, or

(c) any newspaper in which any advertisement relating to the affairs of the Board is inserted, or

(d) the sale to the Board of any articles in which he regularly trades or the purchase from the Board of any articles, to a value in either case not exceeding Rs 1,500 in the aggregate in any year during the period of the contract or work

Sub section (1)—This sub section excludes stipendiary Magistrates and military officers and soldiers

Sub section (2)—This sub section disqualifies a person who is a dismissed government servant a debarred legal practitioner a cantonment servant or a cantonment contractor from becoming a member of the Board

Interpretation

29 For the purposes of sections 26, 27 and 28—

(a) "person" means an individual human being and

(b) a person shall be deemed to pay a tax directly if he pays the tax either himself or through a legally appointed agent

30 Notwithstanding anything hereinbefore contained the "Central Government"[†] may make rules conferring on the manager or representative of an undivided family or of any company or firm or other association or body or on any trustee of any land a right to be enrolled as an elector or to be nominated as a candidate at elections to a Board

Notes—No such provision is made in several Municipal Acts and as such in the case of joint families great difficulty is experienced in enrolling the name of voter

31 The 'Central Government' may, either generally or specially for any cantonment or group of cantonments, after previous publication, make rules consistent with this Act to

Power to make rules regulating elections

* After clause (d) the clause (di) has been inserted in British India by Act 24 of 1936. This clause is not in force in British Burma

† The words 'Central Government' have been substituted in British India by G O Order of 1937. But in Burma read the word 'Governor' for these words (vide G O Order of 1937)

regulate all or any of the following matters, for the purpose of the holding of elections under this Act, namely —

(a) the division of a cantonment into wards, or of the inhabitants of a cantonment into classes, or both,

(b) the determination of the number of members to be elected by each ward or class of persons,

(c) the method by which the annual value of buildings and lands shall be calculated for the purposes of section 27,

(d) the preparation, revision and final publication of electoral rolls,

(e) the registration of electors, the nomination of candidates the time and manner of holding elections and the method by which votes shall be recorded,

(f) the authority by which and the manner in which disputes relating to electoral rolls or arising out of elections shall be decided, and the powers and duties of such authority and the circumstances in which such authority may declare a casual vacancy to have been created or any candidate to have been elected,

(g) any other matter relating to elections or election disputes in respect of which the 'Central Government' * is empowered to make rules under this Chapter or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the "Central Government", * necessary

the authority mentioned in this connection vide 24
C 319 11 A L J 659
311

Members

32 No member of a Board shall vote at a meeting of the Board

Member not to vote on matter on any question relating to his own conduct or on any matter, other than a matter affecting generally the inhabitants of the cantonment, which affects his own pecuniary interest, or the valuation of any property in respect of which he is directly or indirectly interested, or of any property of or for which he is a manager or agent

Notes — No member is entitled to vote on any question in which he has any pecuniary interest either directly or indirectly *Nell v Longbottom* (1891) 1 Q B 767, *Bland v Buchanan* (1901) 2 K B 25

33 Every member of a Board shall be liable for the loss, waste or misapplication of any money or other

Liability of members property belonging to the Board if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while such member, and a suit for compensation for the same may be instituted against him either by the Board or by the "Central Government" †

* The words 'Central Government' have been substituted in British India by G I Order of 1937 In Burma read for the words within quotations 'Governor' (vide G B Order of 1937)

† The words 'Central Government' have been substituted in British India by G I Order of 1937 In Burma for the words within quotations read the word 'Governor' (vide G B Order of 1937)

Removal of members

34 *[(1) The "Central Government † may remove from a Board any member

thereof who —

(a) becomes subject to any of the disqualifications specified in sub section (2) of section 27 or in sub section (2) of section 28, or

(b) has absented himself for more than three consecutive months from the meetings of the Board and is unable to explain such absence to the satisfaction of the Board or

(c) has knowingly contravened the provisions of section 32, or

(d) being a legal practitioner acts or appears on behalf of any other person against the Board in any legal proceeding or against the Crown † in any such proceeding relating to any matter in which the Board is or has been concerned or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person]

(2) The "Central Government † may remove from a Board any member who in the opinion of the "Central Government, † has so flagrantly abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests

(3) No member shall be removed from a Board under this section unless he has been given a reasonable opportunity of showing cause against his removal

Notes — In the Punjab Municipal Act 1911 provisions exist for the removal of an elected member of Municipal Committee if he has since his election become subject to any disqualification which if it had existed at the time of his election, would have rendered him ineligible under any rule for the time being in force regulating the qualifications of candidates for election if it appears that he was at the time of his election subject to any such disqualification. To secure uniformity of practice it is proposed to make a similar provision in the Cantonments Act 1924 in regard to elected members of Cantonment Boards. Section 34 has been recast accordingly and section 35 in conformity therewith —

Statement of Objects and Reasons Though the Local Government has power to remove a member of a Board, it is proposed to give him an opportunity of explanation to the Local Government. L. T. 247 but see 46 M. L. J. 60. Secretary of State and the onus lies on the Local Government. 7 M. 466 (F. B.)

35 *[(1) A member removed under clause (b) of sub-section (1) of section 34 shall, if otherwise qualified be eligible for re-election or re-nomination]

(2) A member removed under clause (c) or clause (d) of sub-section (1) of section 34 shall not be eligible for re-election or nomination for the period during which but for such removal he would have continued in office

(3) A member removed under sub section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal]

Enacted in British India by G. I. C. S. Governor (vide C. B.)

by G. I. Order of 1937. But Secretary of State or the

Servants.

36 (1) No person who has directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of a "Board" * or in any employment under, by or on behalf of a "Board," * otherwise than as a servant of the "Board," * shall become or remain a servant of such "Board." *

(2) A servant of a "Board" * who knowingly acquires or continues to have directly or indirectly by himself or his partner any share or interest in a contract with, by or on behalf of the "Board" * or, in any employment under, by or on behalf of the "Board," * otherwise than as a servant of the "Board," * shall be deemed to have committed an offence under section 168 of the Indian Penal Code †

(3) Nothing in this section shall apply to any share or interest in any contract with, by or on behalf of, or employment under, by or on behalf of a "Board" * if the same is a share in a company contracting with, or employed by, or on behalf of, the "Board" * or is a share or interest acquired or retained with the permission of the "Officer Commanding-in-Chief, the Command," ‡ in any lease or sale to, or purchase by the "Board" * of land or buildings or in any agreement for the same

"(4) Every person applying for employment as a servant of a Board shall, if he is related by blood or marriage to any member of the Board or to any person, not being a menial servant, in receipt of remuneration from the Board, notify the fact and the nature of such relationship to the appointing authority before the appointment is made, and if he has failed to do so, his appointment shall be invalid but without prejudice to the validity of anything previously done by him" §

Notes—Municipal servants are also disqualified from entering into any contract, with the Cantonment Board, either directly or indirectly

||[**36A** Every officer or servant, permanent or temporary, of a "Board" * shall be deemed to be a public servant within the meaning of the Indian Penal Code, and in the definition of legal remuneration in section 161 of that Code the word "Government" shall, for the purposes of this section, be deemed to include a "Board" *.

Procedure

37. (1) Every Board shall ordinarily hold at least one meeting in every month on such day as may be fixed, and of which notice shall be given in such manner as may be provided, by regulations made by the Board under this Chapter.

* The word "Board" has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

† XLV of 1860

‡ after sub section (3) by Act 21 of force,

(2) The President may, whenever he thinks fit, and shall, upon a requisition in writing by not less than one-fourth of the members of the Board, convene a special meeting

(3) Any meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in like manner

Notes —To make a
B D 26=36 L T 188
as special meetings 1
meeting altogether 28
members are present and consent to the meeting being held is given
2 Ld Raym 1358

Tharp v Daves, 2 Q
adjourned as well
'ect may vitiate the
meeting where all the
Musgrave v Newnson,

38 Subject to any regulation made by the Board under this Chapter, any business to be transacted business may be transacted at any meeting

Provided that no business relating to the imposition, abolition or modification of any tax shall be transacted at a meeting unless notice of the same and of the date fixed therefor has been sent to each member not less than seven days before that date

Notes —This section makes compulsory that no business relating to imposition, abolition or modification of any tax shall be transacted at a meeting unless a notice of the same is sent to each member See also 1 M 162 9 B 51 21 A 348 (1913) 1 Ch 5 7 B 399

39 (1) The quorum necessary for the transaction of business at a meeting of a Board 'in which there is more than one elected member' * shall be five or one-half of the number of members of the Board actually holding office at the time, whichever is the greater number

"(1A) The quorum necessary for the transaction of business at a meeting of a Board constituted under sub section (5) of section 13 or under sub-section (1) of section 14, shall be two' †

(2) If a quorum is not present, the President shall adjourn the meeting and the business which would have been brought before the original meeting if there had been a quorum present thereat shall be brought before, and may be transacted at, an adjourned meeting, whether there is a quorum present or not

Quorum —The quorum of a body may be defined to be that number of the body which when assembled in their proper place will enable them to transact their proper business or in other words that number that makes the lawful body and gives them the power to pass a law or ordinance —*Smith's Corporation* is Vol I p 28J In order to form a quorum the interested person may also be counted

Presiding Officer

[40 In the absence of—

(a) both the President and the Vice-President from any meeting of a board in which there is more than one elected member,

(b) the President from a meeting of a Board constituted under sub-section (5) of section 13 or sub section (1) of section 14, the

* The words within quotations have been inserted in British India by Act 21 of 1936 In Burma the words within quotations have been omitted

† Sub section (1A) has been added and proviso has been omitted in British India by Act 21 of 1936 In Burma for sub section (1A) read the proviso — Provided that where the Board does not include any elected member the quorum shall be four

members present shall elect one from among their own number to preside]*

Notes—The presiding officer so elected is entitled to a casting vote *Bland v Buchanan* (1901) 2 K B 75

41 (1) Minutes of the proceedings of each meeting shall be recorded in a book and shall be signed by the President before the close of the meeting; and shall, at such times and in such place as may be fixed by the Board, be open to inspection free of charge by any inhabitant of the cantonment

Minutes

(2) Copies of the minutes shall, as soon as possible after each meeting, be forwarded for information to "the Officer Commanding-in-Chief, the Command,"† [the Officer Commanding the District],‡ the Officer Commanding the brigade area, and the District Magistrate

42 Every meeting of a Board shall be open to the public unless in any case the President, for reasons to be recorded in the minutes, otherwise directs.

Meetings to be public

Notes—The public has no common law right to attend the meeting (1908) 1 Ch 457 C A Such a right is given by this section

43 (1) All questions coming before a meeting shall be decided by the majority of the votes of the members present and voting

(2) In the case of an equality of votes the President shall have a second or casting vote

(3) The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes, together with a short statement of the grounds for such dissent.

Notes—In the absence of any mode of voting the common law method of voting by show of hands must prevail *Falkner v Elger* 4 B & C 449 *Edinburgh v Archbishop of Canterbury* 2 Russ 93 *Shaw v Thompson* 3 Ch D 293 The President or the Chairman is entitled to a casting vote *Bland v Buchanan* (1901) 2 K B 75

[§43A Every Board constituted under section 13 in class I cantonment, or class II cantonment shall appoint a committee consisting of the elected members of the Board, the Health Officer and the Executive Engineer for the administration of such areas in the cantonment as the Central Government may by notification in the official Gazette declare to be bazar areas, and may delegate its powers and duties to such committee in the manner provided in clause (e) of sub-section (1) of section 44

(2) The Vice-President of the Board shall be the Chairman of the committee appointed under sub section (1)]

44 (1) A Board may make regulations consistent with this Act and with the rules made thereunder to provide for all or any of the following matters, namely —

Power to make regulations

* Section 40 has been substituted for British India by Act 24 of 1936 In British Burma read the following section 40 —

In the absence of both the President and Vice President from any meeting the members present shall elect one from among their own number to preside

† Inserted by Act XXXV of 1926

‡ The words within brackets have been omitted in British Burma by G B Order of 1937

§ Section 43A has been inserted for British India by Act 24 of 1936 In Burma this section is not in force

- (a) the time and place of its meetings ,
- (b) the manner in which notice of the meeting shall be given ,
- (c) the conduct of proceedings at meetings and the adjournment of meetings ,
- (d) the custody of the common seal of the Board and the purposes for which it shall be used , and

(e) the appointment of committees for any purpose and the determination of all matters relating to the constitution and procedure of such committees and the delegation to such committees, subject to any conditions which the Board thinks fit to impose, of any of the powers or duties of the Board under this Act other than a power to make regulations or bye-laws

(2) No regulation made under clause (e) of sub-section (1, shall take effect until it has been approved by the 'Central Government' *

(3) No regulation made under this section shall take effect until it has been published in such manner as the 'Central Government' * may direct

Joint action with other local authority

45 (1) A 'Board'† may—

(a) join with any other local authority—

(i) in appointing a joint committee for any purpose in which they are jointly interested and in appointing a Chairman of such committee ,

(ii) in delegating to such committee power to frame terms binding on the Board"† and such other local authority as to the construction and future maintenance of any joint work or to exercise any power which might be exercised by ' the Board or by such local authority ,† and

(iii) in making rules for regulating the proceedings of any such committee relating to the purposes for which it has been appointed , or

(b) with the previous sanction of the Officer Commanding-in-Chief the Command, and § the Provincial Government concerned* enter into an agreement with any other local authority regarding the levy of any tax or toll whereby the said tax or toll respectively leviable by the 'Board and by such other local authority "§ may be levied together instead of separately within the limits of the aggregate area comprising the areas subject to the control of the Board and such other local authority ‡

* Substituted in British India by G. I. Order of 1930. In Burma read the word Governor for these words

† The word 'Board' has been substituted by Act 21 of 1936. In Burma and in excluded areas read the words: Cantonment Authority

‡ The words within quotations have been substituted by Act 21 of 1936 for British India. In Burma for these words read the words: either of the said authorities

§ In British India after the words In Burma omit these words

• In Burma read authorities so.

* In British India the words within quotations have been substituted by Act 21 of 1936. In Burma for these words read said authorities

making any direction under this section, give the "Board"* an opportunity of showing cause why such direction should not be made.

50 If, within the period fixed by a direction made under section 49, any action the taking of which has been directed under that section has not been duly taken, the "[Central Government]† or the Officer Commanding-in-Chief, the Command as the case may be"‡ may make arrangements for the taking of such action, and may direct that all expenses connected therewith shall be defrayed out of the cantonment fund

51. (1) If the President dissents from any decision of the Board, which he considers prejudicial to the health, welfare or discipline of the troops in the cantonment, he may, for reasons to be recorded in the minutes, by order in writing, direct the suspension of action thereon, for any period not exceeding one month and, if he does so, shall forthwith refer the matter to the Officer Commanding-in-Chief, the Command, ["the reference being made, save in cases where the Officer Commanding the District is himself the Officer Commanding-in-Chief, the Command, for the purposes of this Act"§ through the Officer Commanding the District, who may make such recommendations thereon as he thinks fit.]§

(2) If the District Magistrate considers any decision of a "Board"* to be prejudicial to the public health, safety or convenience, he may, after giving notice in writing of his intention to the "Board",* refer the matter to the "Central Government",† and, pending the disposal of the reference to the "Central Government," † no action shall be taken on the decision.

(3) If any Magistrate who is a member of a Board, being present at a meeting, dissents from any decision which he considers prejudicial to the public health, safety or convenience, he may, for reasons to be recorded in the minutes and after giving notice in writing of his intention to the President, report the matter to the District Magistrate ; and the President shall, on receipt of such notice, direct the suspension of action on the decision for a period sufficient to allow of a communication being made to the District Magistrate and of his taking proceedings as provided by sub-section (2).

Notes —No civil suit is maintainable against such an order 31 A 371

Power of Officer Commanding in Chief, the Command, on reference under section 51 or otherwise.

52 (1) The Officer Commanding-in-Chief, the Command, may at any time,—||

(a) direct that any matter or any specific proposal other than one which has been referred to the 'Central Government'† under sub-section (2) of section 51 be considered or re-considered by the "Board"* or

* The word "Board" has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'

† Substituted in British India by G. I. Order of 1937 In Burma read 'Governor'. (Ivide G. B. Order of 1937)

‡ Inserted by Act 10 of 1927.

§ In Burma the words within brackets have been omitted by G. B. Order of 1937

|| Certain words after this repealed by Act VII of 1931 have been omitted

(b) direct the suspension, for such period as may be stated in the order, of action on any decision of a Board * other than a decision, which has been referred to him under sub-section (1) of section 51, and thereafter cancel the suspension or [after giving the Board a reasonable opportunity of showing cause why such direction should not be made]† direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify

(2) When any decision of a Board has been referred to him under sub-section (1) of section 51, the Officer Commanding-in-Chief, the Command may, by order in writing,—

(a) cancel the order given by the President directing the suspension of action or

(b) extend the duration of the order for such period as he thinks fit, or

[(c) after giving the Board a reasonable opportunity for showing cause why such direction should not be made, direct that the decision shall not be carried into effect or that it shall be carried into effect by the Board with such modifications as he may specify] ‡

53 When any decision of a 'Board' * has been referred to the

Powers of Central Government § on a reference made under section 51

Central Government § under sub-section (2) of section 51, the Central Government § may, after consulting the Officer Commanding-in-Chief, the Command, by

order in writing —

(a) direct that no action be taken on the decision, or

(b) direct that the decision be carried into effect either without modification or with such modifications as it may specify

54 (1) If, in the opinion of the Central Government,§ any

Supersession of Board

Board is not competent to perform or persistently makes default in the performance

of the duties imposed on it by or under this Act or otherwise by law, or exceeds or abuses its powers, the 'Central Government' § may || by an order published, together with the statement of the reasons therefor, in the 'official Gazette,' † declare the Board to be incompetent or in default or to have exceeded or abused its powers as the case may be and supersede it for such period as may be specified in the order

Provided that no Board shall be superseded unless a reasonable opportunity has been given to it to show cause against the supersession

(2) When a Board is superseded by an order under sub-section (1)—

(a) all members of the Board shall on such date as may be specified in the order vacate their offices as such members but without

* Substituted by Act 21 of 1935 But in Burma and in excluded areas read Cantonment Authority

† Inserted in British India by Act 21 of 1935 In Burma and in excluded areas omit these words

§ In British
cations as

§ The words Central Government have been substituted in British India by G I Order of 1937 In Burma read the word Governor (vide G. B. Order of 1937)
Certain words after this have been omitted by G I Order of 1937 and G B Order of 1937 respectively

* Substituted by G I Order of 1937 In Burma read 'Gazette' for these words

prejudice to their eligibility for election or nomination under clause (c),

(b) during the supersession of the Board, all powers and duties conferred and imposed upon the Board by or under this Act or otherwise by law shall be exercised and performed by the Officer Commanding the station* subject to such reservation if any, as the 'Central Government'† may prescribe in this behalf, and

(c) before the expiry of the period of supersession elections shall be held and nominations made for the purpose of reconstituting the Board

Notes — Supersession is nothing more than the dismissal of the incompetent councillors followed by the appointment of to borrow the language of English law *a cistos* for the discharge of the functions of the Council pending the nomination or election of other persons who would resume work in the normal way. In a word supersession is but a suspension of the Council. '29 M 539 (541)

Validity of Proceedings

55 (1) No act or proceeding of a Board or of any committee of a Board shall be invalid by reason only of the existence of a vacancy in the Board or committee

(2) No disqualification or defect in the election, nomination or appointment of a person acting as the President or a member of a Board or of any such committee shall vitiate any act or proceeding of the Board or committee if the majority of the persons present at the time of the Act being done or the proceeding being taken were duly qualified members thereof

(3) Any document or minutes which purport to be the record of the proceedings of a Board or of any committee of a Board shall, if made and signed substantially in the manner prescribed for the making and signing of the record of such proceedings, be presumed to be a correct record of the proceedings of a duly convened meeting, held by a duly constituted Board or committee, as the case may be, whereof all the members were duly qualified

Notes — *Fide* 194 293

CHAPTER IV

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS

56 If within a cantonment, or within such limits adjoining a cantonment as the 'Central Government' † may by notification in the 'official Gazette' ‡ define any person not subject to military or air-force law or any person subject to military or air force

Unauthorised sale of spirituous liquor or intoxicating drug

* Substituted by Act 7 of 1925

law otherwise than as a military officer or a soldier knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife or minor child without the written permission of the "Officer Commanding the station" * or of some person authorised by the "Officer Commanding the station" * to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both

Unauthorised possession of spirituous liquor

57 If within a cantonment, or within any limits defined under section 56,—

(a) any person subject to military or air-force law otherwise than as a military officer or a soldier, or

(b) the wife or servant of any such person or of a soldier, has in his or her possession, except on behalf of the "Central Government" † or for the private use of a military officer, more than one quart of any spirituous liquor, other than fermented malt-liquor, without the written permission of the "Officer Commanding the station" *, or of some person authorised by the "Officer Commanding the station" * to grant such permission he or she shall be punishable, in the case of a first offence, with fine which may extend to fifty rupees, and, in the case of a subsequent offence, with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees

58 (1) Any police officer or excise officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence under section 56 or section 57, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed and any vessels or coverings in which the liquor or drug is contained

(2) Where a person accused of an offence under section 56 has been previously convicted of an offence under that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment or within any limits defined under that section which at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of such person

(3) The Court convicting a person of an offence under section 56 or section 57 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2)

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898 ‡ anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken

59 The foregoing provisions of this Chapter shall not apply to the sale or supply of any article in good faith for medicinal purposes by a medical practitioner, chemist or druggist authorised in this behalf by a general or special order of the "Officer Commanding the station"*

CHAPTER V

TAXATION

Imposition of Taxation

†60 (1) The Board may, with the previous sanction of the Central Government impose in any cantonment any tax which, under any enactment for the time being in force, may impose in any municipality in the province wherein such cantonment is situate ‡

(2) Any tax imposed under this section shall take effect from the date of its notification in the "official Gazette" §

¶61 When a resolution has been passed by the Board proposing to impose a tax under section 60 the Board shall in the manner prescribed in section 255 publish a notice specifying —

- (a) the tax which it is proposed to impose,
- (b) the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstance in respect of which they are to be made liable, and
- (c) the rate at which the tax is to be levied

¶62 (1) Any inhabitant of the cantonment may, within thirty days from the publication of the notice under section 61, submit to the Board an objection in writing to all or any of the proposals contained therein and the Board shall take any objection into consideration and pass orders thereon by special resolution

* Substituted by Act 7 of 1925

which is

ment any
imposed

I Order

of 1937)

¶ Sections 61 to 63 have been substituted by Act 24 of 1936 for the following sections 61 to 63 which are in force in British Burma and in excluded areas —

¶ 61 (1) The Board may, with the previous sanction of the Government, impose on any person or class of persons a tax in any cantonment on 60 it shall by notification best suited for the

description of the property

or ()
()
cat on under section 61 submit to the Governor an objection in writing to all or any of the proposals framed therein and the Governor shall take any objection so submitted into consideration

law otherwise than as a military officer or a soldier knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife or minor child without the written permission of the "Officer Commanding the station"* or of some person authorised by the "Officer Commanding the station"* to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months or with both

Unauthorised possession of
spirituous liquor

57 If within a cantonment, or within any limits defined under section 56,—

(a) any person subject to military or air-force law otherwise than as a military officer or a soldier, or

(b) the wife or servant of any such person or of a soldier, has in his or her possession, except on behalf of the "Central Government"† or for the private use of a military officer, more than one quart of any spirituous liquor, other than fermented malt-liquor, without the written permission of the "Officer Commanding the station",* or of some person authorised by the "Officer Commanding the station"* to grant such permission, he or she shall be punishable, in the case of a first offence, with fine which may extend to fifty rupees, and, in the case of a subsequent offence, with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees

58 (1) Any police officer or excise officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence under section 56 or section 57, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed and any vessels or coverings in which the liquor or drug is contained

(2) Where a person accused of an offence under section 56 has been previously convicted of an offence under that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment or within any limits defined under that section which, at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of, such person

(3) The Court convicting a person of an offence under section 56 or section 57 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2)

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898‡ anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken

* Substituted by Act 7 of 1925

† Substituted in British India by G. I. Order of 1937 In Burma for these words read the word 'Government'

‡ V of 1893

59 The foregoing provisions of this Chapter shall not apply to the sale or supply of any article in good faith for medicinal purposes by a medical practitioner, chemist or druggist authorised in this behalf by a general or special order of the "Officer Commanding the station"*

CHAPTER V

TAXATION

Imposition of Taxation

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(2) Any tax imposed under this section shall take effect from the date of its notification in the "official Gazette" §

¶[61 When a resolution has been passed by the Board proposing to impose a tax under section 60 the Board shall in the manner prescribed in section 255 publish a notice specifying —

- (a) the tax which it is proposed to impose
- (b) the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstance in respect of which they are to be made liable and
- (c) the rate at which the tax is to be levied

||[62 (1) Any inhabitant of the cantonment may, within thirty days from the publication of the notice under section 61 submit to the Board an objection in writing to all or any of the proposals contained therein and the Board shall take any objection into consideration and pass orders thereon by special resolution

* Substituted by Act 7 of 1925

† wing section which is any cantonment any on may be imposed

(Vide G I Order

the following sections 61 on 60 it shall by notification best suited for the

(2) If the Board decides to modify its proposals or any of them, it shall republish the modified proposals in the manner provided by section 61 indicating that the proposals are in modification of the proposals previously published and the provisions of sub-section (1) of this section shall apply to such modified proposals

(3) When the Board has finally settled its proposals it shall submit then along with the objections, if any, made in connection therewith to the Central Government through the Officer Commanding-in-Chief the Command

*[63 The Central Government may authorise the Board to impose the tax either in the original form or if any such objection has been submitted in that form or in such modified form as it thinks fit]

Definition of annual value 64 For the purposes of this Chapter, 'annual value' means—

(a) in the case of railway stations, hotels colleges schools hospitals factories and any other buildings which a [Board]† decides to assess under this clause, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto, and

(b) in the case of a building or land not assessed under clause (a), the gross annual rent for which such building (exclusive of furniture or machinery therein) or such land is actually let or where the building or land is not let or in the opinion of the [Board]† is let for a sum less than its fair letting value might reasonably be expected to let from year to year

Provided that where the annual value of any building is by reason of exceptional circumstances in the opinion of the [Board]† excessive if calculated in the aforesaid manner, the [Board]† may fix the annual value at any less amount which appears to it to be just

Notes.—A boundary or a compound wall is not a building 8 C W N 487 15 O W N 84 12 C L J 464 (1 Q B 812 *Clarke v Vestry of Lancaster* 34 J P 181 *Every v London County Council* (1895) 2 Q B 113 *Clarke v Vestry of Lancaster* 34 J P 181 *Every v London County Council* (1895) 2 Q B 113 use and occupation as a habitation T is used in the widest possible sense 11 Ex 181 L R 9 Q B 9 see also to pay tax in India tide 25 M 457

65 (1) Save as otherwise expressly provided in the notification imposing the tax, every tax "assessed † on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease [granted by or on behalf of the Crown or]§ from the [Board]† or on a building lease from any person

68 After the expiry of thirty days from the date of the notification and after considering all objections submitted thereto under section 62 the Governor may impose the tax either in the original form or if any such objection has been so submitted in that form or in

(2) In any other case the tax shall be primarily leviable as follows, namely —

(a) if the property is let, upon the lessor

(b) if the property is sub-let, upon the superior lessor,

(c) if the property is unlet, upon the person in whom the right to let the same vests

(3) On failure to recover any sum due on account of such tax from the person primarily liable there may be recovered from the occupier of any part of the buildings or lands in respect of which the tax is due such portion of the sum due as bears to the whole amount due to the same ratio which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment list.

(4) An occupier who makes any payment for which he is not primarily liable under this section shall in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable for the payment, and, if so entitled, may deduct the amount so paid from the amount of any rent from time to time becoming due from him to such person

Object of amendment by Act 26 of 1927 — As a matter of equity it is considered that the taxes in respect of buildings in Hill Cantonments referred to in clause (pp) of sub-section (c) of section 280 should be held to include any tax assessed on the annual value of holdings whether such a tax is a tax on property, such as house tax or a tax for services rendered such as conservancy or water tax. It is also considered that the same interpretation should be placed on the tax referred to in sections 65 66 75 76 and 77. As

Liability of occupier — Where the owner is himself the occupier he must be classed as an occupier. *Rex v. Property* (1911) 1 K B 83. In *R v. St. Pauls Assessment*

it is not easy to give an accurate and exhaustive

Occupation includes possession as its primary element

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Assessment List

66 When a tax is assessed * on the annual value of buildings or lands or both is imposed the [Board]† shall

Assessment list

cause an assessment list of all buildings or

lands in the cantonment, or of both, as the case may be to be prepared in such form as the "Central Government ‡ may by rule prescribe

* Inserted by Act XXVI of 1927

† In Burma and in excluded area read the

ons have been substituted by G. I. Or
Governor (vide G. B. Order of 1937)

Object of the amendment — Vide notes under s 65

67 When the assessment list has been prepared the [Board]* shall give public notice thereof, and of the place where the list or a copy thereof may be inspected and every person claiming to be the owner, lessee or occupier of any property included in the list and any authorised agent of such person shall be at liberty to inspect the list and to make extracts therefrom free of charge

Notes — A valuation is made when it is finally approved by the Assessment Committee 1911 2 K B 822

68 (1) The [Board]* shall at the same time, give public notice of a date, not less than one month thereafter when it will proceed to consider the valuations and assessments entered in the assessment list, and, in all cases in which any property is for the first time assessed or the assessment is increased it shall also give written notice thereof to the owner and to any lessee or occupier of the property.

(2) Any objection to a valuation or assessment shall be made in writing to the [Board]* before the date fixed in the notice, and shall state in what respect the valuation or assessment is disputed, and all objections so made shall be recorded in a register to be kept for the purpose by the [Board]*

(3) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorised agent, by an Assessment Committee appointed by the [Board]*

(4) The Assessment Committee shall consist of not less than three persons and † it shall not be necessary to appoint to the Assessment Committee any member 'of the Board' †

Notes — The decision must be communicated to the parties vide 12 M 1 6 M 189 8 M L T 810 As regards the exclusive jurisdiction of the Assessment Committee vide 39 C 141 84 M 130 28 M L J 531 14 M 140

69 (1) When all objections made under section 68 have been disposed of and the revision of the valuation and assessment has been completed the assessment list shall be authenticated by the signature of the members of the Assessment Committee who shall at the same time certify that they have considered all objections duly made and have amended the list so far as is required by their decisions on such objections

(2) The assessment list so authenticated shall be deposited in the office of the [Board]* and shall there be open, free of charge, during office hours to all owners, lessees and occupiers of property comprised therein or the authorised agents of such persons and a public notice that it is so open shall forthwith be published

* Substituted by Act 24 of 1936 In Burma and in excluded areas read Cantonment Authority

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of legally qualified to make the same
be impeached 37 C 44 As regards
Appeal Committee vide 7 C 399 32
23 M 523 27 B 403 27 C 849

70 Subject to such alterations as may thereafter be made in the assessment list under the provisions of this Chapter and to the result of any appeal made thereunder, the entries in the assessment list authenticated and deposited as provided in section 69 shall be accepted as conclusive evidence—

(i) for the purpose of assessing any tax imposed under this Act, of the annual value or other valuation of all buildings and lands to which such entries respectively refer and

(ii) for the purposes of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon during the year to which such list relates

Notes—Where the assessment is *ultra vires* the jurisdiction of Civil Court is not ousted
3 C W N 73 27 C 849 21 C 319

Amendment of assessment list [71 * (1) The Board may amend the assessment list at any time—

(a) by inserting or omitting the name of any person whose name ought to have been or ought to be inserted or omitted, or

(b) by inserting or omitting any property which ought to have been or ought to be inserted or omitted, or

(c) by altering the assessment on any property which has been erroneously valued or assessed through fraud accident or mistake, whether on the part of the Board or of the Assessment Committee or of the assessee, or

(d) by revaluing or reassessing any property the value of which has been increased, or

(e) in the case of a tax payable by an occupier, by changing the name of the occupier

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made

(1a) Before making any amendment under sub section (1) the Board shall give to any person affected by the amendment notice of not less than one month that it purports to make the amendment]

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Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the financial year in which the amendment is made

(2) Any person interested in any such amendment may tender an objection to the [Board]* in writing before the time fixed in the notice and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent

Notes—All the Municipal Acts make provision for the amendment of assessment book
Poole v Hrsby Union 3 Ex D 44 New holdings should be included *R v Malden*
 L R 4 Q B 376

72 The 'Board * shall prepare a new assessment list at least once in every three years and for this purpose the provisions of sections 66 to 71 shall apply in like manner as they apply for the purpose of the preparation of an assessment list for the first time

Notes—This provision is only directory and not imperative *R v Ingall* 2 Q B D 199
Reigate Union v S E Ry Co (1894) 1 Q B 411

73 (1) Whenever the title of any person primarily liable for the payment of a tax on the annual value of any building or land is transferred the person whose title is transferred and the person to whom the same is transferred shall within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected if no instrument is executed give notice of such transfer to the Executive Officer

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of the deceased devolves shall give notice of such devolution to the Executive Officer within six months from the date of the deceased

(3) The notice to be given under this section shall be in such form as the Executive Officer may direct and the transferee or other person on whom the title devolves shall, if so required, be bound to produce before the Executive Officer any documents evidencing the transfer or devolution

(4) Every person who makes a transfer as aforesaid without giving such notice to the Executive Officer shall continue liable for the payment of all taxes assessed on the property transferred until he gives notice or until the transfer has been recorded in the registers of the 'Board * but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax

"(5) The Executive Officer shall record every transfer on devolution of title notified to him under sub-section (1) or sub-section (2) in the assessment list and other tax-registers of the Board †

Notes—This section makes provision for giving of notices in case of transfer or succession

74 (1) If any building is erected or re-erected within the meaning of section 179, the owner shall give notice thereof to the Executive Officer within thirty days from the date of its completion or occupation whichever is earlier

* The word within quotations has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words Cantonment Authority

† Sub-section (5) has been inserted by Act 21 of 1936 This sub-section is not in force in Burma and in excluded areas

(2) Any person failing to give the notice required by sub-section (1) shall be punishable with fine which may extend to fifty rupees or ten times the amount of the tax payable on the said building, as erected or re-erected, as the case may be, in respect of a period of three months, whichever is greater

Notes — Tax is to be paid only from the time of the completion or occupation (*vide* 19 N 10)

Remission and Refund

75 If any building is wholly or partly demolished or destroyed or otherwise deprived of value, the "Board" *
 Demolition, etc., of buildings may, on the application in writing † of the owner, "or occupier" ‡ remit or refund such portion of "any tax assessed on the annual value thereof" § as it thinks fit

Object of the assessment — *Vide* notes under s 65

76 In a cantonment,|| when any building or land has remained vacant and unproductive of rent for "sixty" ¶ or more consecutive days** the [Board],* shall remit or refund, as the case may be, such portion of § "any tax assessed on the annual value thereof" †† as may be proportionate to the number of days during which the said building or land has remained vacant and unproductive of rent

Notes — When arable lands remain uncultivated, remission may be granted 14 C W N 85—11 C L J 521

77 For the purpose of obtaining a partial remission or refund of tax, the owner of a building composed of separate tenements may request the "Board,"* at the time of the assessment of the building, to enter in the assessment list, in addition to the annual value of the whole building, a note recording in detail the annual value of each separate tenement. When any tenement, the annual value of which has been thus separately recorded, has remained vacant and unproductive of rent for "sixty" ¶ or more consecutive days** such portion of § "any tax assessed on the annual value of the whole building" †† shall be remitted or refunded as would have been remitted or refunded if the tenement had been separately assessed

* The word within quotations has been substituted by Act 21 of 1936. In Burma and in excluded areas retd. Cantonment Authority

† Inserted by Act VII of 1931

‡ After the word "owner" the words "or occupier" have been added by Act 24 of 1936 not been inserted

|| The word "cantonment" has been omitted by Act 21

* substituted by Act 21 of 1936

British Burma real the above words

†† Certain words after this repealed by Act 21 of 1936 have been omitted

77A* 'No remission or refund under† section 76, or section 77 ‡ shall be made unless notice in writing of the "fact that the building land or tenement has become vacant and unproductive of rent"§ has been given to the

Notice to be given of the circumstances in which remission or refund is claimed

"Board,"|| and no remission or refund shall take effect in respect of any period commencing more than fifteen days before the delivery of such notice

Notes — As it stands there is no doubt that the proviso to section 77 applies to that section only and not to section 76. Its appearance as a new section 77A is intended to make it clear that the provisions thereof are equally applicable to sections 75, 76 and 77. — *Statement of Objects and Reasons*

78 (1) For the purposes of sections 76 and 77 no building, tenement or land shall be deemed vacant if What buildings etc., are to be deemed vacant maintained as a pleasure resort or town or country house, or be deemed unproductive of rent if let to a tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not

(2) The burden of proving all facts entitling any person to claim relief under section 75, or section 76, or section 77, shall be upon him

Notes — A building is not vacant if it contains trade fixtures. *Staly v Castleton Overseers* 28 J L P 710. Empty property held ready for use cannot be said to be vacant. *R v Melladen* (1907) 1 K B 192

79 (1) The owner of any building tenement or land in respect of which a remission or refund of tax has been given under section 76 or section 77 shall give notice of the re-occupation of such building tenement ¶ or land within fifteen days of such re-occupation

(2) Any owner failing to give the notice required by sub-section (1) shall be punishable with fine which shall not be less than twice the amount of the tax payable on such building, tenement or land in respect of the period during which it has been re-occupied and which may extend to fifty rupees, or to ten times the amount of the said tax, whichever sum is greater

Charge on Immoveable Property

80 A tax assessed on the annual value of any building or land shall subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge upon the building or land

Notes — Cantonment tax is a charge on the buildings and land and it ranks only next to land revenue

* By Act XXVI of 1927 the proviso has been numbered as section 77A

† Certain words and figures after this repealed by Act 7 of 1931 have been omitted

Octroi, Terminal Tax and Toll

81. Every person bringing or receiving any goods, vehicles or animals within the limits of any cantonment in which octroi or terminal tax or toll is leviable, shall, when so required by an officer duly authorised by the "Board"* in this behalf, so far as may be necessary for ascertaining the amount of tax chargeable—

(a) permit that officer to inspect, examine or weigh such goods, vehicles or animals, and

(b) communicate to that officer any information, and exhibit to him any bill, invoice or document of a like nature, which such person may possess relating to such goods, vehicles or animals

Notes.—Goods passing through the cantonment in the course of transit is liable to pay the octroi duty 22 B 843

82 (1) Any person who takes or attempts to take past any octroi station or any other place appointed within a cantonment for the collection of octroi, terminal tax or toll any goods, vehicles or animals, on account of which octroi, terminal tax or toll is leviable and thereby evades, or attempts to evade, the payment of such octroi, terminal tax or toll, and any person who abets any such evasion or attempt at evasion, shall be punishable with fine which may extend either to ten times the value of such octroi, terminal tax or toll, or to fifty rupees, whichever is greater, and which shall not be less than twice the value of such octroi, terminal tax or toll, as the case may be

(2) In case of non-payment of any octroi or terminal tax or toll on demand, the officer empowered to collect the same may seize any goods, vehicles or animals on which the octroi, terminal tax or toll is chargeable or any part or number thereof which is of sufficient value to satisfy the demand, [and shall give a receipt specifying the items seized]†

(3) The "Board," * after the lapse of five days from the seizure, and after the issue of a notice in writing to the person in whose possession the goods, vehicles or animals were at the time of seizure, fixing the time and place of sale, may cause the property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand and any expenses occasioned by the seizure, custody and sale thereof, unless the demand and expenses are in the meantime paid

Provided that the Executive Officer may, in any case order that any article of a perishable nature which cannot be kept for five days without serious risk of damage, or which cannot be kept save at a cost which, together with the amount of octroi, terminal tax or toll, is likely to exceed its value, shall be sold after the lapse of such shorter time as he may, having regard to the nature of the article, think proper

(4) If, at any time before the sale has begun, the person whose property has been seized tenders to the Executive Officer the amount of all expenses incurred and of the octroi, terminal tax or toll, the Executive Officer shall release the property seized

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words Cantonment Authority

† The words within brackets have been inserted by Act 24 of 1936 But in Burma and in excluded areas these words are to be omitted

(5) The surplus, if any, of the sale proceeds shall be credited to the cantonment fund, and shall, on application made to the "Board" * within one year after the sale, be paid to the person in whose possession the property was at the time of seizure, and, if no such application is made, shall be the property of the "Board" *.

Notes—In order to convict a person under this section the guilt of the accused must be proved 2 A L J 411=2 Cr L J 352 see also A W N 1882, p 231 Evasion of payment of duty is punishable 10 P R 1874 Cr see also 1900 P L R 88 Cr

83 It shall be lawful for the "Board" *, with the previous sanction of the "Officer Commanding in Chief, the Command," † to lease the collection of any octroi, terminal tax or toll for any period not exceeding one year, and the lessee and all persons employed by him in the management and collection of the octroi, terminal tax or toll shall, in respect thereof,—

(a) be bound by any orders made by the "Board" * for their guidance,

(b) have such powers exercisable by officers or servants of the "Board" * under this Act as the "Board" * may confer upon them, and

(c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the "Board" * for the management and collection of the octroi, terminal tax or toll, as the case may be.

Provided that no article distrained may be sold except under the orders of the "Board" *.

Notes—For the facility of the Board (Cantonment Authority) this section empowers the Board (Cantonment Authority) to lease the collection of octroi terminal tax or toll for any period not exceeding one year.

Appeals

84 (1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Magistrate or to such other officer as may be empowered by the "Central Government" ‡ in this behalf.

Provided that, where § the person to whom the appeal would ordinarily lie is, or was when the tax was imposed, a member of the Board, the appeal shall lie to the Commissioner of the Division, [or, in a province where there are no Commissioners, to the District Judge] ||

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of the appellant,

* The word Board has been substituted for the words Cantonment Authority by A. O. 1908 P. R. 100.

draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908*

Notes —

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All 163=1933 A L J 162=144 Ind Cas 1016 This section affords a remedy to an injured person against the levy of a tax from him which has been imposed under the Act A I R 1937 Sind 305 A person cannot resort to a civil Court for refund of the excess tax levied from him or for an injunction restraining the Cantonment Authorities to levy the alleged excess tax *Ibid*

Costs of appeal

85 In every appeal the costs shall be in the discretion of the officer hearing the appeal

86 If the "Board" † fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the cost may order the person having the custody of the balance of the cantonment fund to pay the amount.

Notes — This section lays down the summary procedure of recovering costs

Conditions of right to appeal

87. No appeal shall be heard or determined under this Chapter unless—

(a) the appeal is, in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of the authentication of the assessment list under section 69 (exclusive of the time requisite for obtaining a copy of the relevant entries therein), or, as the case may be, within thirty days of the date on which an amendment is finally made under section 71 and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given within thirty days next after the date of the presentation of the first bill in respect thereof

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the Court before whom the appeal is preferred that he had sufficient cause for not preferring it within that period

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the 'Board' †

88 The order of an appellate authority confirming, setting aside or modifying an order in respect of any valuation or assessment or liability to assessment or taxation shall be final

Finality of appellate orders

* Act V of 1908

† The word 'Board' has been substituted for the words 'Cantonment Authority' by Act 24 of 1936 But in Burma and in excluded areas read the words 'Cantonment Authority'

Provided that it shall be lawful for the appellate authority, upon application or on its own motion, to review any order passed by it in appeal if application in this behalf is made within three months from the date of the original order

Notes—No civil suit

ent 118 P L R 1911

399 see also 32 A 491

A I R 1937 Sind 305

relating to any valuation assessment liability to assessment or taxation by a Cantonment Board 144 Ind Cas 1016-1933 A L J 162-A I R 1933 All 163

Payment and Recovery of Taxes

89 Save as otherwise expressly provided under this Act, any tax

Time and manner of payment
of taxes

imposed under the provisions of this Act shall be payable on such dates and in such instalments, if any as the 'Board' * may, by

public notice direct

90 (1) When any tax has become due, the Executive Officer shall cause to be presented to the person liable for the payment thereof a bill for the amount due

Presentation of bill

(2) Every such bill shall specify the particulars of the tax and the period for which the charge is made

Notes—Such bills or notices may be served by any person who is authorized by the Executive Officer to do so *Ye v. Dall v. Craic*, 20 J P 197

91 (1) If the amount of the tax for which any bill has been presented is not paid to the 'Board' * within thirty days from the presentation thereof,

Notice of demand

the Executive Officer may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in Schedule I

(2) For every notice of demand which the Executive Officer causes to be served on any person under this section a fee of such amount, not exceeding one rupee as shall in each case be fixed by the Executive Officer, shall be payable by the said person and shall be included in the costs of recovery

Notes—The obligation to pay the taxes arises whether it is demanded or not. But proceedings for recovery cannot be taken unless there has been a demand and a neglect or refusal to pay *Halsbury's Laws* Vol 24 p 66. If less amount is demanded by a notice of demand and it is paid a fresh demand for the balance can be made *R v. Dile* 113/12 (1892) 1 Q B 43

92 (1) If the person liable for the payment of any tax does not, within thirty days from the service of the notice of demand pay the amount due, or

Recovery of tax

show sufficient cause for non-payment of the same to the satisfaction of the Executive Officer such sum with all costs of recovery may be recovered under a warrant, issued in the form set forth in Schedule II, defaulter

cover any sum the
this Chapter

(2) Every warrant issued under this section shall be signed by the Executive Officer

* The word Board has been substituted for the words Cantonment Authority by Act 24 of 1936. But in Burma and in excluded areas read the words Cantonment Authority

Moveable property —¹ Physically moveable place which they at present occupy without a and immovable things are such as cannot be essential change in their actual nature doors of a house is not moveable property ¹

As regards liability of the officer charged with the execution of the warrant, vide 36 C 67, 33 B 219

93 (1) It shall be lawful for any servant of the "Board" to whom a warrant issued under section 92 is addressed to distrain, wherever it may be found, [in the cantonment][†] any moveable property [or standing timber, growing crops or grass belonging to][†] of the person therein named as defaulter, subject to the following conditions, exceptions and exemptions, namely —

(a) the following property shall not be distrained —

(i) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(ii) tools of artisans,

(iii) books of account, or

(iv) when the defaulter is an agriculturist, his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood,

(b) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any property has been distrained which, in the opinion of the Executive Officer, should not have been distrained, it shall forthwith be returned

(2) The person charged with the execution of a warrant of distress shall forthwith make an inventory of the property which he seizes under such warrant, and shall, at the same time, give a written notice in the form set forth in Schedule III to the person in possession thereof at the time of seizure that the said property will be sold as therein mentioned

Notes — A distress warrant can be executed only by a person named in the warrant *Baker v Wicks* (1901) 1 K B 743 The Cantonment Authority would be liable if the property of a third person is seized *L & N W Ry Co v Giles* 33 J P 776 The property which would answer the amount for which a distress warrant is issued should be distrained *Hurral v Wills* 8 Taunt 369 see also *Roden v Fglon*, 6 C B 427

94 (1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is, when added to the amount to be recovered likely to exceed its value, the

Disposal of distrained property
Executive Officer shall give notice to the person in whose possession the property was at the time of seizure that it will be sold at once, and shall sell it accordingly by public auction unless the amount mentioned in the warrant is forthwith paid

(2) If the warrant is not in the meantime suspended by the Executive Officer, or discharged, the property seized shall, after the expiry of the period named in the notice served under sub section (2) of section 93, be sold by public auction by order of the Executive Officer

* The word "Board" has been substituted for the words "Cantonment Authority" by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

† The words within brackets have been inserted by Act 21 of 1936 Omit the words within brackets in Burma and in excluded areas

(3) The surplus of the sale-proceeds, if any, shall forthwith be credited to the cantonment fund, and notice of such credit shall be given at the same time to the person from whose possession the property was taken, and, if the same is claimed by written application to the "Board" * within one year from the date of the notice, a refund thereof shall be made to such person. Any surplus not claimed within one year as aforesaid shall be the property of the "Board".*

(4) For every distraint made under this Chapter a fee of such amount, not exceeding one rupee, as shall in each case be fixed by the Executive Officer shall be charged, and the said fee shall be included in the costs of recovery

Notes—The Corporation should not be the auction purchaser in such a sale *Pope v Headen* 5 All 422 *Knox v Peterson* 21 Wis 247 The object of mentioning the time after the expiry of which the sale would take place is to give the defaulter time to pay *Sabourin v Marshall*, 3 B & Ald 440 If the sale proceeds of the distrained property do not answer the amount for which the property has been sold a second distress can also be made *Hutchins v Chambers* 1 Burr 579 see also *Lee v Cooke*, 27 L J Ex 337

95 (1) If the Executive Officer has reason to believe that any person from whom any sum is due "or is about to become due" † on account of any tax is about to remove from the cantonment, he may direct the immediate payment by such person of the sum so due or about to become due, and cause a bill for the same to be served on such person

(2) If, on the service of such bill, such person does not forthwith pay the sum so due or about to become due, the amount shall be leviable by distress and sale in the manner hereinbefore provided in this Chapter, except that it shall not be necessary to serve upon the defaulter any notice of demand and the warrant for distress and sale may be issued and executed without any delay

Notes—This section contemplates an exceptional circumstance and as such the service of any notice of demand and warrant for distress are not necessary

96 Instead of proceeding against a defaulter by distress and sale as hereinbefore provided in this Chapter, or after a defaulter has been so proceeded against unsuccessfully or with only partial success any sum due or the balance of any sum due, as the case may be from such defaulter on account of a tax may be recovered from him by a suit in any Court of competent jurisdiction

Notes—Under this section a suit to recover tax is also maintainable in a civil Court The civil Court cannot in such a case question the amount of tax which is imposed 29 P W R 1909 109 P L R 1909 1 P R 1891 Cr, 84 M 190 Such a suit is governed by Art 120 of the Indian Limitation Act 3 M 124

Special Provisions relating to Taxation

Power to prohibit or exempt from taxation

97 Every "Board" * shall be deemed to be a Municipal Committee for the purposes of the Municipal Taxation Act, 1881 †

But in Burma and in

Notes—The object of the Municipal Taxation Act 1881 is to empower the Governor General in Council to prohibit in certain cases the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council

98 A "Board" * may make special provision for the cleansing of any factory, hotel, club or group of buildings or lands used for any one purpose and under one management and may fix a special rate and the dates and other conditions for periodical payment thereof, which shall be determined by a written agreement with the person liable for the payment of the conservancy or scavenging tax in respect of such factory, hotel, club or group of buildings or lands :

Provided that, in fixing the amount, proper regard shall be had to the probable cost to the 'Board' * of the services to be rendered

99. (1) When in pursuance of section 98 a "Board" * has fixed a special rate for the cleansing of any factory, hotel, club or group of buildings or lands, such premises shall be exempted from the payment of any conservancy or scavenging tax imposed in the cantonment

(2) The following buildings and lands shall be exempt from any tax on property, namely —

(a) places set apart for public worship and either actually so used or used for no other purpose ,

(b) buildings used for educational purposes and public libraries, play-grounds and dharmasalas which are open to the public and from which no income is derived ,

(c) hospitals and dispensaries maintained wholly by charitable contributions ,

(d) burning and burial grounds, not being the property of [the Crown][†] or a 'Board' *, which are controlled under the provisions of this Act ,

(e) buildings or lands vested in a "Board" * and

(f) any buildings or lands used or acquired for the public service or for any public purpose, which are the property of, [the Crown][†] or in the occupation of, [the Central or any Provincial Government][§]

Notes—The Corporation has no power to exempt property from general taxes or special assessments unless such power is vested in it by statute and an intent to exempt any property or any portion of the property from taxation must be found plainly expressed in the statute *Ayanger's Municipal Corporation* p 145

[99A] The "Central Government" § may by notification in the 'official Gazette' [†] exempt either wholly or in part from the payment of any tax imposed under this Act, any person or class of persons or any property or goods or class of property or goods'][¶]

Notes—*Vide* also the Municipal Taxation Act 1881

the words 'Cantonment Authority' by
read the word 'Cantonment Authority'
Burma read 'Government' for the word
'official Gazette' [†]
have been inserted by G. I. Order of 1937

In Burma omit these words

§ In British India the words 'the Central or any Provincial Government' have been substituted by G. I. Order of 1937 In Burma for these words read the words 'the Government'

¶ Inserted by Act XXXV of 1926

* Certain words after this repealed by Act VII of 1931 have been omitted

100 A "Board" * may exempt, for a period not exceeding one year at a time from the payment of any tax or any portion of a tax imposed under this Act, any person who is in its opinion by reason of poverty unable to pay the same

Exemption of poor persons
Notes—*Vide s* 106 of the Bengal Municipal Act 1884 (B C Act III of 1884)

101 (1) A "Board" * may, with the previous sanction of the 'Officer Commanding-in-Chief, the Command'† allow any person to compound for any tax

Composition

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable as if it were a tax

102 A "Board" * may write off any sum due on account of any tax [or rate,]‡ or of the costs of recovering any tax [or rate]‡ if such sum is, in its opinion, irrecoverable

Irrecoverable debts

[Provided that where the sum written-off in favour of any one person exceeds fifty rupees, the sanction of the Officer Commanding-in-Chief, the Command, shall be first obtained]‡

103 (1) The Executive Officer may, by written notice, call upon any inhabitant of the cantonment to furnish such information as may be necessary for the purpose of ascertaining—

(a) whether such inhabitant is liable to pay any tax imposed under this Act,

(b) at what amount he should be assessed, or

(c) the annual value of the building or land which he occupies and the name and address of the owner or lessee thereof

(2) If any person when called upon under sub-section (1) to furnish information, neglects to furnish it or furnishes information which is not true to the best of his knowledge or belief, he shall be punishable with fine which may extend to one hundred rupees

Notes—This section corresponds to section 100 of the Bengal Municipal Act

104 No assessment and no charge or demand on account of any tax or fee shall be impeached or affected by reason only of any mistake in the name of any person liable to pay such tax or fee, or in the description of any property or thing or any mistake in the amount of the assessment, charge or demand, if the directions contained in this Act and the rules and bye-laws made thereunder have in substance and effect been complied with, but any person who sustains any special damage by reason of any such mistake shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction

Immaterial error not to affect liability

of 1936 In Burma and in ex

in Burma and in excluded areas

y Act 24 of 1936 Omit these words

Notes —As to omission to fill up particular columns of the book vide *Queen Empress v Poomalai* 21 M 296

105 No distress levied under this Chapter shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account only of any defect of form in the notice of demand warrant of distress or other proceeding relating thereto, nor shall any such person be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him but any person who sustains any special damage by reason of any such irregularity shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction

Notes —This section lays down the law as stated by the Calcutta High Court in *Deputy Behari Das v The Calcutta Corporation* 31 C 452 (472)

CHAPTER VI

CANTONMENT FUND AND PROPERTY

Cantonment Fund

106 There shall be formed for every cantonment a cantonment fund, and there shall be placed to the credit thereof the following sums, namely —

(a) the balance, if any, of the cantonment fund formed for the cantonment under the Cantonments Act 1910

(b) all sums received by or on behalf of the "Board" *†

Notes —The cantonment fund is held by the Cantonment Authority in trust and can be spent by it in a manner authorized by this Act *Arnold v Gratesand Corporation* 2 K A J 574=25 L J Ch 776 see also *H G v De Winton* (1906) 2 Ch 106

107 (1) Where in or near a cantonment there is a Government treasury or sub treasury, or a branch of the Imperial Bank of [India] ‡ the cantonment fund shall be kept in such treasury, sub-treasury or bank, as the case may be

(2) Where there is no such treasury, sub treasury or bank, the cantonment fund may be deposited with any bank to which the Government

Cantonment Authority by
Cantonment Authority
ductions up to the end
urma after this read the

following —
[and

(c) subject to any deductions made under section 545 of the Code of Criminal Procedure 1898 or under any other law for the time being in force, or under any order of the Governor all fines recovered from persons convicted of offences committed within the cantonment—

(i) under this Act or any rule or bye law made thereunder or

(ii) under section 31 of the Police Act, 1861 or under any corresponding enactment or XIV of the Indian Penal Code or Act or enactment wherein or whereunder provision is

made for a fine being credited to the cantonment fund or

which the
shall be

100 A "Board" * may exempt, for a period not exceeding one year at a time from the payment of any tax or any portion of a tax imposed under this Act, any person who is in its opinion by reason of poverty unable to pay the same

Notes—*Vide* s 106 of the Bengal Municipal Act 1884 (B C Act III of 1884)

101 (1) A "Board" * may, with the previous sanction of the "Officer Commanding-in-Chief, the Command"† allow any person to compound for any tax

Composition

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable as if it were a tax

102 A "Board" * may write off any sum due on account of any tax, [or rate,]‡ or of the costs of recovering any tax [or rate]‡ if such sum is, in its opinion, irrecoverable

Irrecoverable debts

[Provided that, where the sum written-off in favour of any one person exceeds fifty rupees the sanction of the Officer Commanding-in-Chief, the Command, shall be first obtained]‡

103 (1) The Executive Officer may, by written notice, call upon any inhabitant of the cantonment to furnish such information as may be necessary for the purpose of ascertaining—

Obligation to disclose liability

(a) whether such inhabitant is liable to pay any tax imposed under this Act,

(b) at what amount he should be assessed, or

(c) the annual value of the building or land which he occupies and the name and address of the owner or lessee thereof

(2) If any person when called upon under sub-section (1) to furnish information, neglects to furnish it or furnishes information which is not true to the best of his knowledge or belief, he shall be punishable with fine which may extend to one hundred rupees

Notes—This section corresponds to section 100 of the Bengal Municipal Act

104 No assessment and no charge or demand on account of any tax or fee shall be impeached or affected by reason only of any mistake in the name of any person liable to pay such tax or fee or in the description of any property or thing or any mistake in the amount of the assessment, charge or demand, if the directions contained in this Act and the rules and bye-laws made thereunder have in substance and effect been complied with, but any person who sustains any special damage by reason of any such mistake shall be entitled to recover compensation for the same by suit in a Court of competent jurisdiction

Immaterial error not to affect liability

(f) all land or other property transferred to the "Board" * [by the Central or a Provincial Government]† or by gift, purchase or otherwise for local public purposes, and

(g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appertaining to streets

unless the power is especially conferred upon it by Legislature in express terms or by necessary implication. A general grant of power is not sufficient. *Tanjanger Municipal Corporation* p 112 citing *Dillon* Vol 3 pp 1566 7

109 The cantonment fund and all property vested in a 'Board' * shall be applied for the purposes whether express or implied, for which, by or under this Act or any other law for the time being in force, powers are conferred or duties or obligations are imposed upon the "Board" *

Provided that the "Board" * shall not incur any expenditure for acquiring or renting land beyond the limits of the cantonment or for constructing any work beyond such limits except—

(a) with the sanction of the "Central Government" ‡ and

(b) on such terms and conditions as the 'Central Government' ‡ may impose

Provided, further, that priority shall be given in the order hereinafter set forth to the following liabilities and obligations of a 'Board' * that is to say,—

(a) to the liabilities and obligations arising from a trust legally imposed upon or accepted by the 'Board,' *

(b) to the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 §

(c) to the payment of establishment charges

(d) to the payment of such expenses on account of pauper lunatics sent from the cantonment to public lunatic asylums and mental hospitals as the 'Central Government' ‡ directs the Board * to pay, and

(e) to the payment of any sum the payment of which is expressly required by the provisions of this Act or any rule or bye law made thereunder

Notes—As regards the liability for non repairs vide 28 B 810 33B 893 81 M 117
A suit by a rate payer is maintainable for an injunction to prevent mis-application of municipal fund 22 B 646

* The word Board has been substituted by Act 24 of 1936 In Burma and in Order of 1937 In Burma

It is India by G I Order

treasury business has been entrusted, and, in the absence of such a bank, with any banker or person acting as a banker who has given such security for the safe custody of the fund and the payment on demand of the funds so deposited as the "Central Government"* may in each case direct.

"(3) A "Board"† may, from time to time, with the previous sanction of the "Officer Commanding-in-Chief, the Command"‡ invest any portion of its cantonment fund in securities of the [Government of India]§ or in such other securities, including fixed deposits in banks, as the "Central Government"* may approve in this behalf, and may dispose of such investments or vary them for others of a like nature"||

(4) The income resulting from any fixed deposit or from any such security as is referred to in sub-section (3) or from the proceeds of the sale of any such security shall be credited to the cantonment fund

Notes —Under section 21 of the repealed Cantonments Act 1910 the cantonment to the Cantonment With the introduction as there is no cantonment fund is now like municipal funds, on why the Cantonments on fixed deposits the Imperial Bank, and in every case —

Property

108 Subject to any special reservation made by the "Central Government,"* all property of the nature hereinafter in this section specified which has been acquired or provided or is maintained by a "Board"† shall vest in and belong to that "Board,"‡ and shall be under its direction, or say, —

uses, manure and nightsoil depots, the supply, storage or distribution of water for public purposes and all bridges, buildings, engines, materials, and things connected therewith or appertaining thereto ;

(c) all sewers, drains, culverts and water-courses, and all works, materials and things appertaining thereto ,

(d) all dust, dirt, dung, ashes, refuse, animal matter, filth and rubbish of every kind, and dead bodies of animals collected by the "Board"† from the streets, houses, privies, sewers, cess-pools or elsewhere, or deposited in places appointed by the "Board"† for such purpose ,

(e) all lamps and lamp-posts and apparatus connected therewith or appertaining thereto ,

* In British India the words within quotations have been substituted by Act 24 of 1936 and G. I. Order of 1937 respectively. In Burma for these words read the word "Governor" (vide G. B. Order of 1937)

† The word "Board" has been substituted by Act 24 of 1936. In Burma and in authority "

of India' insert 'or Burma Government

(f) all land or other property transferred to the "Board" * [by the Central or a Provincial Government]† or by gift, purchase or otherwise for local public purposes, and

(g) all streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements, and things existing on or appertaining to streets

Notes—A municipal corporation cannot purchase property for profit or revenue *Dull v Arnold* 124 Wis 65 cited in *Dillon on Corporations* Vol 3 p 1559 see also *Bank of Michigan v Niles*, 1 Doug (Mich) 401 As a general rule a municipal corporation has no power to purchase and hold land for a municipal purpose beyond its territorial limits unless the power is expressly conferred upon it by Legislature in express terms or by necessary implication A general grant of power is not sufficient *Anyanger v Municipal Corporation* p 112 citing *Dillon* Vol 3 pp 1566 7

109 The cantonment fund and all property vested in a 'Board' * shall be applied for the purposes, whether express, or implied, for which, by or under this Act or any other law for the time being in force, powers are conferred or duties or obligations are imposed upon the "Board" *

Application of cantonment fund and property shall be applied for the purposes, whether express, or implied, for which, by or under this Act or any other law for the time being in force, powers are conferred or duties or obligations are imposed upon the "Board" *

Provided that the "Board" * shall not incur any expenditure for acquiring or renting land beyond the limits of the cantonment or for constructing any work beyond such limits except—

(a) with the sanction of the "Central Government," ‡ and

(b) on such terms and conditions as the 'Central Government' ‡ may impose

Provided, further, that priority shall be given in the order hereinafter set forth to the following liabilities and obligations of a "Board" * that is to say,—

(a) to the liabilities and obligations arising from a trust legally imposed upon or accepted by the 'Board,' *

(b) to the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 §

(c) to the payment of establishment charges,

(d) to the payment of such expenses on account of pauper lunatics sent from the cantonment to public lunatic asylums and mental hospitals as the 'Central Government' ‡ directs the "Board" * to pay, and

(e) to the payment of any sum the payment of which is expressly required by the provisions of this Act or any rule or bye-law made thereunder

Notes—As regards the liability for non repairs vide 28 B 310 33B 303 31 M 117 A suit by a rate payer is maintainable for an injunction to prevent mis application of municipal fund 22 B 646

* The word Board has been substituted by Act 21 of 1936 In Burma and in excluded areas read Cantonment Authority

† The words within brackets have been substituted by G I Order of 1937 In Burma read the words by His Majesty

‡ The words within quotations have been substituted in British India by G I C of 1937 But in Burma read Governor for these words

§ 11 of 1914

110 When there is any hindrance to the permanent or temporary acquisition upon payment of any land required by a "Board"* for the purposes of this Act, the "Central Government"† may, at the request of the "Board,"* proceed the acquisition thereof‡ under the provisions of the Land Acquisition Act, 1894§ and, on payment by the "Board"* of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the "Board".*

Acquisition of immovable property.
Power to make rules regarding cantonment fund and property

111. The "Central Government"† may make rules consistent with this Act to provide for all or any of the following matters, namely.—

(a) the conditions on which property may be acquired by "Boards"* or on which property vested in a "Board"* may be transferred by sale, mortgage, lease, exchange or otherwise, and

(b) any other matter relating to the cantonment fund or cantonment property in respect of which no provision or insufficient provision is made by or under this Act, and provision is, in the opinion of the "Central Government"† necessary.

CHAPTER VII.

CONTRACTS

112 Subject to the provisions of this Chapter every "Board"* shall be competent to enter into and perform any contract necessary for the purposes of this Act

Contracts by whom to be executed

Sanction

113 (1) Every contract—

(a) for which budget provision does not exist, or

(b) which involves a value or amount exceeding one hundred rupees, shall require the sanction of the "Board".*

contract such as is referred to in by the "Board"* or by the Executive Officer on behalf of the "Board".*

114 (1) Every contract made by or on behalf of a "Board,"* the value or amount of which exceeds fifty rupees, shall be in writing, and every such

Execution of contracts

* The words "Board" or "Boards" have been substituted by Act 24 of 1936. In Burma and in excluded areas read the words "Cantonment Authority" or "Cantonment Authorities".

† The words "Central Government" have been substituted by Act 24 of 1936. In Burma and in excluded areas read the words "Cantonment Authority" or "Cantonment Authorities".

§ 1 of 1894

Order of 1937)
Order of 1937)
of 1937).

contract shall,* be signed by two members, of whom the President or the Vice-President shall be one, and be countersigned by the Executive Officer, and be sealed with the common seal of the Board †

Provided that, where there is a Board, the Executive Officer may in a case of urgency, with the previous sanction of the President of the Board, execute on behalf of the Board any contract the value or amount of which does not exceed two hundred rupees

(2) Where an Executive Officer executes a contract on behalf of a Board under sub section (1), he shall submit a report of his action and of the reasons therefor to the Board at its next meeting

Notes —The formalities mentioned in sub section (1) must be strictly complied with *Halsbury's Laws*, Vol 8, p 379

Contracts improperly executed not to be binding on a "Board" ‡

115 If any contract is executed by or on behalf of a "Board" † otherwise than in conformity with the provisions of this Chapter, it shall not be binding on the "Board" ‡

Notes —' In some cases corporations are by their constitutions required to observe certain formalities when making contracts for particular purpose In these cases the requirements of the constitution must be strictly carried out —*Halsbury's Laws*, Vol 8 p 379

CHAPTER VIII

DUTIES AND DISCRETIONARY FUNCTIONS OF "BOARD" †

116 It shall be the duty of every "Board", † so far as the funds at its disposal permit, to make reasonable provision within the cantonment for—

Duties of 'Board' :

- (a) lighting streets and other public places ,
- (b) watering streets and other public places ,
- (c) cleansing streets, public places and drains, abating nuisances and removing noxious vegetation ,
- (d) regulating offensive, dangerous or obnoxious trades, callings and practices ,
- (e) removing on the ground of public safety, health or convenience and projections in streets and other
- (f) securing or removing dangerous buildings and places ,
- (g) acquiring, maintaining, changing and regulating places for the disposal of the dead ,
- (h) constructing, altering and maintaining streets, culverts

* After this the words where there is a Board have been omitted by Act 21 of 1936 In Burma and in excluded areas after this read the words where there is a Board

† In British India after this the words or where there is no Board be signed by the Officer Commanding the station and be sealed with the official seal of the Cantonment Authority have been omitted by G I Order of 1937 In Burma these words have been retained

‡ The word Board has been substituted by Act 21 of 1936, In Burma and in excluded areas read the words Cantonment Authority .

markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works,

(i) planting and maintaining trees on road-sides and other public places,

(j) providing or arranging for a sufficient supply of pure and wholesome water, where such supply does not exist, guarding from pollution water used for human consumption, and preventing polluted water from being so used,

(k) registering births and deaths,

and d of public vaccination,
supporting public hospitals
relief.

(o) rendering assistance in extinguishing fires, and protecting life and property when fires occur,

(p) maintaining and developing the value of property vested in, or entrusted to the management of, the "Board †", and

(q) fulfilling any other obligation imposed upon it by or under this Act or any other law for the time being in force

Notes—Municipal corporations can spend moneys only on the objects specified in the

41 L R 25/

116A† A Board † may, subject to any condition imposed by the "Central Government," § manage any property entrusted to its management by the "Central Government" § on such terms as to the sharing of rents and profits accruing from such property as may be determined by rule made under section 280

Notes—Every corporation even when not empowered by the statutes can defend its rights and property *A G v Brecon Corporation*, 10 Ch D 204

Discretionary functions of **117** A "Board † may, within the "Board † cantonment, make provision for—

(a) laying out in areas, whether previously built upon or not, new streets and acquiring land for that purpose and for the construction of buildings and compounds of buildings, to abut on such streets,

(b) constructing establishing or maintaining public parks gardens, offices, dairies, bathing or washing places, drinking fountains, tanks, wells and other works of public utility,

(c) reclaiming unhealthy localities,

(d) furthering educational objects by measure other than establishment and maintenance of primary schools,

e words or assisting have been substituted in these words have been omitted 24 of 1936 In Burma and in exclu

ment have been substituted by G I , (vide G B Order of 1937)

(e) taking a census and granting rewards for information which may tend to secure the correct registration of vital statistics ,

(f) making a survey ,

(g) giving relief on the occurrence of local epidemics by the establishment or maintenance of relief works or otherwise ,

(h) securing or assisting to secure suitable places for the carrying on of any offensive, dangerous or obnoxious trade calling or occupation ,

(i) establishing and maintaining a farm or other place for the disposal of sewage ,

(j) constructing subsidising or guaranteeing tramways or other means of locomotion, and electric lighting or electric power works ,

(k) adopting any measure, other than a measure specified in section 116 or in the foregoing provisions of this section, likely to promote the safety, health or convenience of the inhabitants of the cantonment , or

(l) the doing of anything on which expenditure is declared by the "Central Government, * or by the 'Board † with the sanction of the 'Central Government*" to be an appropriate charge on the cantonment fund

‡[117A A 'Board † may make provision for educational objects outside the cantonment if it is satisfied that the interests of the residents of the cantonment will be served thereby]

Power of expenditure for educational purposes outside the cantonment

CHAPTER IX

PUBLIC SAFETY AND SUPPRESSION OF NUISANCES

General Nuisances

118 (1) Whoever—

Penalty for causing nuisances

(a) in any street or other public place within a cantonment,—

(i) is drunk and disorderly or drunk and incapable of taking care of himself or

(ii) uses any threatening, abusive or insulting words or behaves in a threatening or insulting manner with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned , or

(iii) exposes himself, or wilfully or indecently exposes his person , or

1. for alms or

of exciting charity,
wound or

(vi) carries meat exposed to public view or

(vii) is found gaming or

(viii) pickets animals, or collects carts or

* Substituted by G. I. Order of 1937. In Burma read the word Governor (vide G. B. Order of 1937)

† The word Board has been substituted by Act 24 of 1936. In Burmese areas read the words 'Cantonment Authority'

‡ Substituted by Act XXXV of 1926

(ix) being engaged in the removal of night-soil or other offensive matter or rubbish wilfully or negligently permits any portion thereof to spill or fall or neglects to sweep away or otherwise effectually to remove any portion thereof which may spill or fall in such street or place, or

(x) without proper authority affixes upon any building, monument, post, wall, fence, tree or other thing, any bill, notice or other document, or

(xi) without proper authority defaces or writes upon or otherwise marks any building, monument, post, wall, fence, tree or other thing, or

(xii) without proper authority removes, destroys, defaces or otherwise obliterates any notice or other document put up or exhibited under this Act, or

(xiii) without proper authority displaces, damages or makes any alteration in, or otherwise interferes with, the pavement, gutter, ls of any such street, or any water-pipe maintained by the ace, or extinguishes a public

light, or

(xiv) carries any corpse not decently covered or without taking due precautions to prevent risk of infection or injury to the public health or annoyance to passers-by or to persons dwelling in the neighbourhood, or

(xv) carries night-soil or other offensive matter or rubbish at any hour prohibited by the "Board"* by public notice, or in any pattern of cart or receptacle which has not been approved for the purpose by the "Board,"* or fails to close such cart or receptacle when in use, or

(b) carries night-soil or other offensive matter or rubbish along any route in contravention of any prohibition made in this behalf by the "Board"* by public notice, or

(c) deposits, or causes or permits to be deposited, earth or materials of any description, or any offensive matter or rubbish, in any place not intended for the purpose in any street or other public place or waste or unoccupied land under the management of the "Board"*, or

(d) having charge of a corpse fails to bury, burn or otherwise lawfully dispose of the same within twenty-four hours after death, or

(e) makes any grave or buries or burns any corpse in any place not set apart for such purpose, or

(f) keeps or uses, or knowingly permits to be kept or used any place as a common gaming house or assists in conducting the business of any common gaming house, or

(g) at any time or place at which the same has been prohibited by the "Board"* by public or special notice, beats a drum or tom-tom, or blows a horn or trumpet, or beats any utensil, or sounds any brass or other instruments, or plays any music, or

(h) disturbs the public peace or order by singing, screaming or shouting, or

* The word within quotations has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

(4) lets loose any animal so as to cause, or negligently allows any animal to cause injury, danger, alarm or annoyance to any person, or
 (7) being the occupier of any building or land in or upon which an animal dies, neglects within three hours of the death of the animal or, if the death occurs at night, within three hours after sun rise, either—

(i) to report the occurrence to the Executive Officer or to an officer, if any, appointed by him in this behalf with a view to securing the removal and disposal of the carcase by the public conservancy establishment, or

(ii) to remove and dispose of the carcase in accordance with the 'Baard'* by public notice or any Executive Officer on receipt of such

(k) save with the written permission of the "Board" and in such manner as it may authorise, stores or uses night-soil, manure, rubbish or any other substance emitting an offensive smell, or

(l) uses or permits to be used as a latrine any place not intended for that purpose, shall be punishable with fine which may extend to fifty rupees

(2) Whoever does not take reasonable means to prevent any child under the age of twelve years being in his charge from easing himself in any street or other public place within the cantonment shall be punishable with fine which may extend to twenty-five rupees

(3) The owner or keeper of any animal found picketed or straying without a keeper in a street or other public place in a cantonment shall be punishable with fine which may extend to twenty rupees

(4) Any animal found picketed as aforesaid may be removed by any officer or servant of the 'Board'* or by any police officer to a pound as if the animal had been found straying

Public place —Verandha of private house accessible to street is not public place 33 Cr L J 1315—A I R 1931 Lah 576 136 Ind Cas 720

Section 118 (1a) (iii) —The giving of offence by the exposure is not a necessary ingredient of the offence under this clause. The offence is complete if the exposure is wilful or indecent and in a public place. The word or in the sub clause is a mistake for and 91 Ind Cas 569—A I R 1926 All 263

Section 118 (1) (c) —A *takht pesh* or the moveable wooden platform cannot be held to be earth or material of any description or any offensive matter, or 'rubbish' within the meaning of cl (c) of section 118 (1) 103 Ind Cas 411—28 Cr L J 683 (1)—A I R 1927 Lah 61—*Takht pesh* or moveable wooden platform does not fall within cl (c) 9 A I Cr R 24

Dogs

119 (1) A 'Board'* may make bye-laws to provide for the registration of all dogs kept within the cantonment

Registration and control of dogs

(2) Such bye-laws shall—

(a) require the registration by the Officer Commanding each military unit of all dogs kept in the lines occupied by that unit,

(b) require that every registered dogs shall wear a collar to which shall be attached a metal token to be issued by the registration authority, and fix the fee payable for the issue thereof,

(c) require that any dog which has not been registered or which

* The word Board has been substituted by Act 24 of 1936. In Burma and in excluded areas read the words "Cantonment Authority".

is not wearing such token shall, if found in any public place, be detained at a place set apart for the purpose and

(d) fix the fee which shall be charged for such detention and provide that any such dog shall be liable to be destroyed or otherwise disposed of unless it is claimed and the fee in respect thereof is paid within one week

and may provide for such other matters as the 'Board' * thinks fit

(3) A 'Board' * may—

(a) cause to be destroyed, or to be confined for such period as that authority may direct, any dog or other animal which is, or is reasonably suspected to be, suffering from rabies, or which has been bitten by any dog or other animal suffering or suspected to be suffering from rabies,

(b) by public notice direct that after such date as may be specified in the notice dogs which are without collars or without marks distinguishing them as private property and are found straying on the streets or beyond the enclosures of the houses of their owners, if any, may be destroyed, and cause them to be destroyed accordingly

(4) No damages shall be payable in respect of any dog or other animal destroyed or otherwise disposed of under this section

(5) Whoever, being the owner or person in charge of any dog, neglects to restrain it so that it shall not be at large in any street without being muzzled and without being secured by a chain lead in any case in which—

(a) he knows that the dog is likely to annoy or intimidate any person or

(b) the 'Board' * has, by public notice during the prevalence of rabies, directed that dogs shall not be at large without muzzles and chain leads,

shall be punishable with fine which may extend to one hundred rupees

(6) Whoever in a cantonment—

(a) allows any ferocious dog which belongs to him or is in his charge to be at large without being muzzled or

(b) sets on or urges any dog or other animal to attack worry or intimidate any person, or

(c) knowing or having reason to believe that any dog or animal belonging to him or in his charge has been bitten by an animal suffering or reasonably suspected to be suffering from rabies, neglects to give immediate information of the fact to the Executive Officer or gives information which is false,

shall be punishable with fine which may extend to two hundred rupees

Traffic

120 Whoever in driving leading or propelling a vehicle along a street fails, except in a case of actual necessity—

Rule of the road

(a) to keep to the left when passing a vehicle coming from the opposite direction, or

* The word 'Board' has been substituted by Act 24 of 1936. In Burma and in excluded areas read the words 'Cantonment Authority'

(b) to keep to the right when passing a vehicle going in the same direction as himself, shall be punishable with fine which may extend to fifty rupees.

Notes—The Cantonment Authority is given power to control the traffic.

Prevention of Fire, etc.

121. (1) A "Board"* may, by public notice, direct that within such limits in the cantonment as may be specified in the notice, the roofs and external walls of huts or other buildings shall not, without the permission in writing of the "Board,"* be made or renewed of grass, mats, leaves or other inflammable materials, and may, by notice in writing, require any person who has disobeyed any such direction as aforesaid to remove or alter the roofs or walls so made or renewed.

(2) A "Board"* may, by notice in writing, require the owner of any building in the cantonment which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such time as may be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the "Board"* or before the issue of such public notice.

Provided that, in the case of any such roof or wall in existence before the issue of such a public notice or made with the consent of the "Board,"* that authority shall make compensation, not exceeding the original cost of constructing the roof or wall, for any damage caused by the removal.

122 A "Board"* may, by public notice, prohibit in any case where such prohibition appears to it to be necessary for the prevention of danger to life or property, the stacking or collecting of wood, dry grass, straw or other inflammable materials or the placing of mats or thatched huts or the lighting of fires in any place in the cantonment, or within any limits therein, which may be specified in the notice.

123. No person shall set a naked light on or near any building in any street or other public place in a cantonment in such manner as to cause danger of fire.

Provided that nothing in this section shall be deemed to prohibit the use, subject to the permission in writing of the "Board,"* of lights for purposes of illumination on the occasion of a festival, or public or private entertainment.

Notes—The provisions of sections 121, 122 and 123 are specially enacted in the Cantonments Act. No such provision finds place in the Municipal Act.

124. (1) Notwithstanding anything contained in the Cinematograph Act, 1918,† no exhibition of pictures or other optical effects by means of a cinematograph or other like apparatus for

* The word "Board" has been substituted by Act 21 of 1936. In Burma and in excluded areas read the words "Cantonment Authority."

† Act II of 1918.

the purpose of which inflammable films are used, and no public dramatic performance or pantomime shall be given in any cantonment elsewhere than in premises for which a licence has been granted by the "Board*" under this section

(2) If the owner of a cinematograph or other apparatus uses the apparatus or allows it to be used, or if any person takes any part in any public dramatic performance or pantomime, in contravention of the provisions of this section, or if the occupier of any premises allows them to be used in contravention of the provisions of this section or of any condition of any licence granted under this section, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to fifty rupees for each day after the first during which the offence continues

(3) Nothing in this section shall be deemed to prohibit the giving of any exhibition or any dramatic performance or pantomime in any theatre or institute which is the property of the "Crown"† where the exhibition, performance or pantomime is held with the permission and under the control of the military authorities

125 Whoever in a cantonment discharges any fire-arm or lets off fire-works or fire-balloons, or engages in any game in such manner as to cause or to be likely to cause danger to persons passing by or dwelling or working in the neighbourhood or risk of injury to property shall be liable to fine which may extend to fifty rupees

126 Where in a cantonment any building, or wall, or any thing affixed thereto, or any well, tank, reservoir, pool depression, or excavation, or any bank or tree, is, in the opinion of the "Board" * "in a ruinous state or, ‡ for want of sufficient repairs, protection or enclosure, "a nuisance or" ‡ dangerous to persons passing by or dwelling or working in the neighbourhood the 'Board' * may, by notice in writing, require the owner [or part owner or person claiming to be the owner or part owner thereof, or, failing any of them, the occupier]§ thereof 'either to remove the same or ‡ to repair, [or to protect or to enclose]|| the same in such manner as it thinks necessary, and, if the danger is, in the opinion of the "Board," * imminent, it shall forthwith take such steps as it thinks necessary to avert the same

* The word "Board" has been substituted by Act 21 of 1936 In Burma and in excluded areas read 'Cantonment Authority'

† In British India the word the 'Crown' has been substituted by G. I. Order of 1937 In Burma for this word read 'Government'

‡ The words within quotations have been inserted by Act 7 of 1925

§ In British India the words within brackets have been inserted by Act 21 of 1936 In Burma and in excluded areas omit these words

|| In British India the words within brackets have been substituted by Act 21 of 1936, In Burma and in excluded areas read for these words 'protect or enclose'.

127 A 'Board'* may by notice in writing require the owner or part owner, or person claiming to be the owner or part owner, of any building or land in the cantonment or the lessee or the person claiming to be the lessee of any such land which, by reason of disuse or disputed ownership or other cause, has remained unoccupied and has become the resort of idle and disorderly persons or of persons who have no ostensible means of subsistence or cannot give a satisfactory account of themselves or is used for gaming or immoral purposes, or otherwise occasions or is likely to occasion a nuisance to secure and enclose the same within such time as may be specified in the notice

CHAPTER X

SANITATION AND THE PREVENTION AND TREATMENT OF DISEASE

Sanitary Authorities

128 The following officers shall, for the purposes of sanitation have control over, and be responsible for maintaining in a sanitary condition those parts of a cantonment, respectively, which are specified in the case of each, that is to say —

(a) the 'Officer Commanding the station'†—all buildings and lands which are occupied or used for military purposes

(b) the Officer Commanding the air forces in the cantonment— all buildings and lands which are occupied or used for air force purposes

(c) the head of any civil department or railway administration occupying as such any part of the cantonment—all buildings and lands in his charge as head of that department or administration

129 (1) The Health Officer shall exercise a general sanitary supervision over the whole cantonment and shall submit monthly to the Board* a report as to the sanitary condition of the cantonment together with such recommendations in connection therewith as he thinks fit

(2) The Assistant Health Officer shall perform such duties in connection with the sanitation of the cantonment as are, subject to the control of the Board* allotted to him by the Health Officer

Conservancy and Sanitation

130 All public latrines and urinals provided or maintained by a Board* shall be so constructed as to provide separate compartments for each sex and not to be a nuisance and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order

Notes.—This section corresponds to sect. 35 of the English Public Health Act 1875

* The word Board has been substituted by Act 24 of 1936. In Burma excluded areas read the words Cantonment Authority

† Inserted by Act 7 of 1925

131 (1) On the application or with the consent of the occupier of any building or land, or, where the occupier of any building or land fails to make arrangements to the satisfaction of the 'Board * for the matters referred to in this section without such consent, and after giving notice in writing to the occupier a Board * may undertake the house scavenging of any building or land in the cantonment for such period as it thinks fit on such terms as it may prescribe in this behalf

(2) Where the 'Board * has undertaken the duties referred to in this section, all matter removed in the performance of such duties shall be the property of that Authority

(3) For the purposes of this section, 'house scavenging' means the removal of filth or rubbish or other offensive matter from a privy, latrine, urinal drain cesspool or other common receptacle for such matter

Notes—Refuse may be roughly divided into two classes, public and private. Public refuse consists of street and road sweepings and is generally dealt with by the municipal authorities themselves who are responsible for the upkeep of streets and public places. Private refuse consists of household refuse and is generally dealt with by the occupier of the premises.

132 (1) Every 'Board * shall provide or appoint in proper and convenient situations public receptacles, depots or places for the temporary deposit or disposal of household rubbish offensive matter carcases of dead animals and sewage

(2) The 'Board * may, by public notice issue directions as to the time at which, the manner in which, and the conditions subject to which any matter referred to in sub section (1) may be removed along a street or may be deposited or otherwise disposed of

(3) All matter deposited in receptacles, depots or places provided or appointed under this section shall be the property of the Board *

Notes—The Cantonment Authority (Board) must provide or appoint in proper and convenient situations public receptacles depots and places for the temporary deposit or final disposal of dust ashes refuse and rubbish and other offensive matter.—*Asyanger's Municipal Corporation* p 26

133 The Executive Officer of any cantonment may, by notice in writing,—

(a) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—

(i) to close any cesspool appertaining to the land or building which is, in the opinion of the Executive Officer, a nuisance, or

(ii) to keep a clean condition in such manner as may be prescribed by the notice any receptacle, for filth or sewage accumulating on the land or in the building, or

(iii) to prevent the water of any private latrine urinal, sink or bath room, or any other offensive matter, from soaking draining or flowing, or being put from the land or building upon any street or

* The word 'Board' has been substituted by Act 24 of 1936. In Burma and in excluded areas read the words 'Cantonment Authority'

other public place, or into any water-course or into any drain not intended for the purpose, or

(iv) to collect and deposit for removal by the conservancy establishment of the "Board",* within such time and in such receptacle or place, situate at not more than one hundred feet from the nearest boundary of the premises, as may be specified in the notice, any offensive matter or rubbish which such person has allowed to accumulate or remain under, in or on such building or land, or

(b) require any person to desist from making or altering any drain leading into a public drain, or

(c) require any person having the control of a drain in the cantonment to cleanse, purify, repair or alter the same, or otherwise put it in good order, within such time as may be specified in the notice

134 (1) Where any well, tank, cistern, reservoir receptacle, or other place in the cantonment where water is stored or accumulates, whether within any private enclosure or not, is in such a condition as to create a nuisance or, in the opinion of the Health Officer, or the Assistant Health Officer, is or is likely to be a breeding place for mosquitoes, the "Board"* may, by notice in writing, require the owner, lessee or occupier thereof within such period as may be specified in the notice, to fill up or cover the well, cistern, reservoir or receptacle or to fill up the tank, or to drain off or remove the water, as the case may be

(2) The "Board" * may, if it thinks fit, with the previous sanction of the 'Officer Commanding-in-Chief, the Command † meet the whole or any portion of the expenses incurred in complying with a requisition under sub section (1)

135 A "Board" * may, by notice in writing, require the owner or lessee of any building or land in the cantonment to provide, in such manner as may be specified in the notice, any latrine, urinal, cesspool, dust-bin or other receptacle for filth sewage, or rubbish, or any additional latrine, urinal, cesspool or other receptacle as aforesaid which should, in its opinion, be provided for the building or land

136 Every person employing, whether on behalf of the Government or otherwise, more than ten workmen or labourers, and every person managing or having control of a market school, theatre or other place of public resort in a cantonment shall give notice of the fact to the Board * and shall provide such latrines and urinals, and shall employ such number of sweepers, as the 'Board' * thinks fit and shall cause the latrines and urinals to be kept clean and in proper order

Provided that nothing in this section shall apply in the case of a factory to which the Indian Factories Act, 1911, applies

Notes —A theatre is a place of public resort 30 B 392 The employment may be of any kind and for any length of time 23 B 528

Private latrines

137 A "Board" * may, by notice in writing —

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words Cantonment Authority

† Substituted by Act \\\ of 19 6

(a) require the owner or other person having the control of any private latrine or urinal in the cantonment not to put the same to public use ; or

(b) where any plan for the construction of private latrines or urinals has been approved by the "Board,"* and copies thereof may be obtained free of charge on application,—

(i) require any person repairing or constructing any private latrine or urinal not to allow the same to be used until it has been inspected by or under the direction of the Health Officer and approved by

any private latrine or
urinal with such plan, or

(c) require the owner or other person having the control of any such private latrine or urinal which, in the opinion of the "Board,"* constitutes a nuisance, to remove the latrine or urinal, or

(d) require any person having the control whether as owner, lessee or occupier of any land or building in the cantonment—

(i) to have any latrines provided for the same shut out by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood, or

(ii) to cleanse in such manner as the Board* may specify in the notice any latrine or urinal belonging to the land or building

(e) require any person being the owner and having the control of any drain in the cantonment to provide within ten days from the service of the notice, such covering as may be specified in the notice

Notes.—The Cantonment Authority is competent to ask the owner to alter, repair or put the privy in good order (1881) P J 60 (1885) P J 131 (1888) P. J 247.

138 (1) Where it appears to a "Board"* that any block of buildings in the cantonment is in an unhealthy condition by reason of the manner in which the buildings are crowded together, or of the narrowness or closeness of the street or of the want of proper drainage or ventilation, or of the impracticability of cleansing the buildings or other similar cause, it may cause the block to be inspected by a committee consisting of—

(a) the Health Officer,

(b) the Civil Surgeon of the district or, if his services are not available, some other medical officer [in the service of the Crown]†

(c) the Executive Engineer or a person deputed by the Executive Engineer in this behalf and

[(d) where the cantonment is a class I or class II cantonment, two non-official members of the Board, or where the cantonment is a class III cantonment one non-official member of the Board]‡

(2) The committee shall make a report in writing to the "Board"* regarding the sanitary condition of the block, and if it considers that

† of 1936 In Burma and in excluded

in British India for the words "of
in for these words read the words "of

the Government

‡ In British India clause (d) to sub section (1) has been substituted by Act 21 of 1936 for the following clause which has been retained in Burma —

(d) where there is a Board two non official members thereof

the condition thereof is likely to cause risk of disease to the inhabitants of the building or of the neighbourhood or otherwise to endanger the public health, it shall clearly indicate on a plan verified by the Executive Engineer, or the person deputed by him to serve on the committee, the buildings which should in its opinion wholly or in part be removed in order to abate the unhealthy condition of the block

(3) If, upon receipt of such report, the "Board" * is of opinion that all or any buildings indicated should be removed, it may, by notice in writing require the owners thereof to remove them

Provided that the "Board" * shall make compensation to the owners for any buildings so removed which may have been erected under proper authority

Provided, further, that the "Board" * may, if it considers it equitable in the circumstances so to do, pay to the owners such sum as it thinks fit as compensation for any buildings so removed which have not been erected under proper authority

(4) For the purposes of this section "buildings" includes enclosure walls and fences appertaining to buildings

Notes — The term building is much wider than 'house' in significance 26 L J Ch 731

139 (1) Where it appears to a "Board" * that any building or part of a building in the cantonment which is used as a dwelling house is so overcrowded as to endanger the health of

Overcrowding of dwelling houses

the inmates thereof, it may after such inquiry as it thinks fit, by notice in writing require the owner or occupier of the building or part thereof, as the case may be, within such time not being less than one month as may be specified in the notice, to abate the overcrowding of the same by reducing the number of lodgers, tenants or other inmates to such number as may be specified in the notice

(2) Any person who fails without reasonable cause, to comply with a requisition made upon him under sub-section (1) shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, to an additional fine which may extend to five rupees for every day after the first during which the failure has continued

Notes — Powers are also given to local authorities to deal with buildings which are insanitary and overcrowded — *Aizyanger's Municipal Corporation* p 345

140 (1) Where any building in a cantonment is so ill-constructed or dilapidated as to be in the opinion of the Board * in an insanitary state, the 'Board' * may, by notice in writing, require

Power to require repair or alteration of building

the owner within such time as may be specified in the notice, to execute such repairs or to make such alterations as it thinks necessary for the purpose of removing such defects

(2) A copy of every notice issued under sub-section (1) shall be conspicuously posted on the building to which it relates

(3) A notice issued under sub-section (1) shall be deemed to have been complied with if the owner of the building to which it relates has, instead of executing the repairs or making the alterations directed by the notice removed the building

* The word Board has been substituted by Act VI of 1936 In Burma and in some areas read the words Cantonment Authority

Notes—The Cantonment Authority can deal with buildings which are ruinous and dangerous to the public and adjoining occupiers *Vide* 53B 334, *London County Council v Herring*, (1894) 2 Q B 522

141. (1) The Executive Officer may, by notice in writing, require the owner, lessee or occupier of any building or land in the cantonment, which appears to him to be in a filthy or insanitary state, within twenty-four hours to cleanse the same or otherwise put it in a proper state, in such manner as may be specified in the notice

(2) If, within three months from the date of the service of a notice under sub section (1), any building or land in respect of which the notice was issued is again in a filthy or insanitary state, the owner, lessee or occupier, as the case may be, shall be punishable with fine which may extend to two hundred rupees

Notes—Where a notice is issued under s 141 (1) of the

with a notice under s 141 (1) he cannot be prosecuted under s 141 (2) He can be dealt with under s 141 (1) read with s 268 and in case of a continuing failure to comply with it he is liable to an additional fine *Lachman v Emperor* A I R 1935 All 905 = 158 Ind Cas 1010 = 36 Cr L J 1493 = 1935 Cr C 1056 Offences under s 141 (1) of the Act are complete on the day the notice is served or a

Ibid

142 If a 'Board' * is satisfied that any building or part of a building in the cantonment which is intended for or used as a dwelling place is unfit for human habitation, it may cause a notice to be posted on some conspicuous part of the building prohibiting the owner or occupier thereof from using the building or room for human habitation, or allowing it to be so used, until it has been rendered fit for such use to the satisfaction of the "Board" *

Notes—The Cantonment Authority as sanitary authority is competent to exercise the powers given by this section.

143 A "Board" * may, by notice in writing, require the owner, lessee or occupier of any land in the cantonment to clear away and remove any thick or noxious vegetation or undergrowth which appears to it to be injurious to health or offensive to persons residing in the neighbourhood

Notes—Non compliance with a notice, validly issued makes the offence complete. 34B 346 = 12 Bom L R 126.

144. Where, in the opinion of a "Board,"* the cultivation in the cantonment of any description of crop or the use therein of any kind of manure or

* The word 'Board' has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'.

the irrigation of any land therein in any specified manner is likely to be injurious to the health of persons in the neighbourhood, the Board * may, after giving notice in writing to the owner or person in charge of the land, require the owner or person in charge to stop the irrigation after giving notice in writing to the owner or person in charge of the land, or may by a like notice require that it shall be carried out subject to such conditions as the Board * thinks fit.

Provided that if when a notice is issued under this section any land to which it relates has been lawfully prepared for cultivation or any crop is sown therein or is standing thereon the Board * shall if it directs that the notice is to take effect on a date earlier than that by which the crop would ordinarily be sown or reaped as the case may be make compensation to all persons interested in the land or crop for the loss, if any, incurred by them respectively by reason of compliance with the notice.

Notes—The Cantonment Authority as sanitary authority can take the measures provided in this section for the sake of sanitation.

Burial and Burning Grounds

145 A Board * may, by notice in writing require the owner or person in charge of any burial or burning ground in the cantonment to supply such information as may be specified in the notice concerning the condition management or position of such ground.

Power to call for information regarding burial and burning grounds

Burial—The right to bury a dead body is a civil right 30 M 15 23 B 666

146 (1) No place in a cantonment which has not been used as a burial or burning ground before the commencement of this Act shall be so used without the permission in writing of the Board *.

Permission for use of new burial or burning ground

(2) Such permission may be granted subject to any conditions which the 'Board *' thinks fit to impose for the purpose of preventing annoyance to, or danger to the health of persons residing in the neighbourhood.

Notes—Burial may be allowed in a private land if it does not amount to a nuisance *Clowley v Byas* 5 Ch D 944 see also *Clegg v Melcalfe* (1914) 1 Ch 808

147 (1) Where a 'Board *' after making or causing to be made a local inquiry, is of opinion that any burial or burning ground in the cantonment has become offensive to or dangerous to the health of persons living in the neighbourhood it may, with the previous sanction of the 'Central Government'† by notice in writing require the owner or person in charge of such ground to close the same from such date as may be specified in the notice.

Power to require closing of burial or burning ground

(2) Where the 'Central Government'† sanctions the issue of any notice under sub section (1) it shall declare the conditions on which the burial or burning ground may be re-opened and a copy of such declaration shall be annexed to the notice.

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read Cantonment Authority

† In British India the words within quotations have been substituted by G O Order of 1937 In Burma read the word Governor (vide G O Order of 1937)

(3) Where the 'Central Government * sanctions the issue of any such notice, it shall require a new burial or burning ground to be provided at the expense of the cantonment fund or, if the community concerned is willing to provide a new burial or burning ground the "Central Government * shall require a grant to be made from the cantonment fund towards the cost of the same

(4) No corpse shall be buried or burnt in any burial or burning ground in respect of which a notice issued under this section is for the time being in force

Notes — vide 35 M 681 25 C 425

148 The provisions of sections 145 146 and 147 shall not apply in the case of any burial ground which is Exempt on from operation of sections 145 to 147 for the time being managed by or on behalf of the Government

149 A Board † may, by public notice, prescribe routes in the cantonment by which alone corpses may Removal of corpses be removed to burial or burning grounds

Prevention of Infectious or Contagious Diseases

150 "Any person † being in charge of, or in attendance whether as a medical practitioner or otherwise upon any person in a cantonment whom he knows or has reason to believe to be suffering from a contagious or infectious disease, or being the owner lessee or occupier of any building in a cantonment in which he knows that any such person is so suffering shall if he fails to give information or if he gives false information, to the 'Board † respecting the existence of such disease, be punishable with fine which may extend to one hundred rupees

Provided that no person shall be punishable under this section for failure to give information if he had reasonable cause to believe that the information had already been duly given

Provided further that this section shall not apply in the case of venereal disease where the person suffering therefrom is under specific and adequate medical treatment and is by reason of his habits and conditions of life and residence unlikely to spread the disease

151 (1) In the event of a cantonment being visited or threatened by an outbreak of any infectious Special measures in case of outbreak of infectious or epidemic diseases

ing in-Chief, the Command § if he thinks that the provisions of this Act or of any law for the time being in force in the cantonment are

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insufficient for the purpose, may, with the previous sanction of the 'Central Government,—'

(a) take such special measures, and

(b) by public notice, make such temporary regulations to be observed by the public or by any class or section of the public, as he thinks necessary to prevent the outbreak or the spread of the disease.

Provided that, where in the opinion of the "Officer Commanding-in-Chief, the Command"† immediate measures are necessary, he may take action without such sanction as aforesaid and, if he does so, shall forthwith report such action to the 'Central Government' *

(2) Whoever commits a breach of any temporary regulation made under sub-section (1) shall be deemed to have committed an offence under section 188 of the Indian Penal Code †

152 Where it is certified to the Executive Officer by a medical practitioner that the outbreak or spread of any infectious or contagious disease in the cantonment is, in the opinion of such medical practitioner, attributable to the milk supplied by any dairyman, the Executive Officer may, by notice in writing, require the dairyman, within such time as may be specified in the notice, to furnish him with a full and complete list of the names and addresses of all his customers within the cantonment, or to give him such information as will enable him to trace the persons to whom the dairyman has sold milk

Notes—This section is enacted to prevent a further spread of the contagious diseases in the cantonment through milk supply

153 Where it is certified to the Executive Officer by the Health Officer that it is desirable, with a view to prevent the spread of any infectious or contagious disease in the cantonment, that the list of the customers of , notice in writing, require the notice, to furnish the Health Officer with a full and complete list of the names and addresses of all owners within the cantonment of clothes and other articles which the washerman washes or has washed during the six weeks immediately preceding the date of the notice

Notes—This section is enacted to prevent a further spread of the contagious diseases in the cantonment through washerman

154 Where, after inspection, the Health Officer is of opinion that any infectious or contagious disease is caused or is likely to arise in the cantonment from the consumption of the milk supplied from a dairy or from the washing of clothes or other articles in any place, or from any process employed by a washerman, he shall report the matter to the Executive Officer

Action on report submitted by
Health Officer

155 Upon receipt of a report submitted by the Health Officer under section 154, the Executive Officer may, by notice in writing,—

(a) prohibit the supply of milk from the dairy until the notice has been withdrawn, or

(b) prohibit the washerman from washing clothes or other articles in any such place or by any such process as aforesaid until the notice has been withdrawn or unless he uses such place in such manner, or washes by such process, as the Executive Officer may direct in the notice

Notes—This precaution is necessary for public health. All the Municipal Corporations are required by statute to take such steps as are necessary for the prevention of contagious disease—*vide Dillon Vol II p 1031*

156 The Health Officer may take possession of any milk, clothes or other articles which are or have recently been in the possession, of any dairyman on whom a notice has been served under section 152, or of any clothes or other articles which are or have recently been in the possession of any washerman, on whom a notice has been served under section 153, and may subject the same or cause the same to be subjected to such chemical or other process as he may think necessary, and the "Board" shall pay from the cantonment fund all the costs of the process and shall also pay to the owner of the milk, clothes or other articles such sum as compensation for any loss occasioned by such process as may appear to it to be reasonable

Contamination of public conveyance

157 Whoever in a cantonment—

(a) uses a public conveyance while suffering from an infectious or contagious disease, or

(b) uses a public conveyance for the carriage of a person who is suffering from any such disease, or

(c) uses a public conveyance for the carriage of the corpse of a person who has died from any such disease, shall be bound to take proper precautions against the communication of the disease to other persons using or who may thereafter use the conveyance and to notify such use to the owner driver or person in charge of the conveyance, and further to report without delay to the Executive Officer the number of the conveyance and the name of the persons so notified

158 (1) Where any person suffering from, or the corpse of any person who has died from, an infectious or contagious disease has been carried in a public conveyance which ordinarily plies in a cantonment, the driver thereof shall forthwith report the fact to the Executive Officer who shall forthwith cause the conveyance to be disinfected if that has not already been done

(2) No such conveyance shall be brought again into use until the Executive Officer has granted a certificate stating that it can be used without causing risk of infection

* The word "Board" has been substituted by Act 24 of 1936. In Burma and in excluded areas read the words "Cantonment Authority".

Notes—The English Acts go further and make it penal for any person suffering from contagious disease to travel in public conveyance *Vide Halsbury* Vol 23 p 452 As regards the liability of owner of a conveyance to carry a person infected with contagious disease, *vide* 7 Bom L R 460=23 Cr L J 439

159 Whoever fails to make to the Executive Officer any report which he is required to make by section 157 or section 158 shall be punishable with fine which may extend to one hundred rupees

160 Notwithstanding anything contained in any law for the time being in force, no owner, driver or person in charge of a public conveyance shall be bound to convey or to allow to be conveyed in such conveyance in or in the vicinity of a cantonment any person suffering from an infectious or contagious disease or the corpse of any person who has died from such disease unless and until such person pays or tenders a sum sufficient to cover any loss and expense which would ordinarily be incurred in disinfecting the conveyance

161. Where a 'Board' * is of opinion that the cleansing and disinfection of any building or part of a building in the cantonment or of any articles in any such building or part which are likely to retain infection, or the renewal of the flooring of any such building or part of such building would tend to prevent or check the spread of any infectious, or contagious disease, he may, by notice in writing require the owner or occupier to cleanse and disinfect the said building, part or articles, as the case may be, or to renew the said flooring within such time as may be specified in the notice

Provided that where in the opinion of the "Board" * the owner or occupier is from poverty or any other cause unable effectually to carry out any such requisition the 'Board' * may, at the expense of the cantonment fund, cleanse and disinfect the building part or articles, or, as the case may be, renew the flooring

Notes—Municipal Corporations may by written notice require the owner or occupier to cleanse and disinfect the same in the manner and within the time prescribed in such notice—*Municipal Corporation* p 395

162 (1) Where the destruction of any hut or shed in a cantonment is, in the opinion of the "Board" * necessary to prevent the spread of any infectious or contagious disease, the "Board" * may, by notice in writing require the owner to destroy the hut or shed and the materials thereof within such time as may be specified in the notice

(2) Where the President of a Board† is satisfied that the destruction of any hut or shed in the cantonment is immediately necessary for the purpose of preventing the spread of any infectious or contagious disease, he may order the owner or occupier of the hut or shed to

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cer Commanding the station have
130 1 hut in Burma and in excluded

destroy the same forthwith, or may himself cause it to be destroyed after giving not less than two hours' notice to the owner or occupier thereof

(3) The "Board" * shall pay compensation to the owner of any hut or shed destroyed under this section

163 The "Board" * shall provide free of charge temporary shelter or house accommodation for the members of any family in which an infectious or contagious disease has been prevalent.

Temporary shelter for inmates of disinfected or destroyed building or shed

proceedings taken under such shelter or accommodation as aforesaid to be provided for them

164 (1) Where in a cantonment any building or part of a building is intended to be let in, which any person has, within the six weeks immediately preceding, been suffering from an infectious or contagious disease, the person letting the building or part shall before doing so disinfect the same in such manner as the "Board" * may, by public or special notice, direct, together with all articles therein liable to retain infection

Disinfection of building before letting the same

(2) For the purposes of this section, the keeper of a hotel lodging house or sarai shall be deemed to let to any person who is admitted as a guest therein that part of the building in which such person is permitted to reside

Notes — *Vide Golcloigh v Edwards* 57 J P 712

165 No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of to another person any article or thing which he knows or has reason to believe has been exposed to contamination by any infectious or contagious disease and is likely to be used in or taken into, a cantonment

Disposal of infected article without disinfection

Notes — This section prohibits the transfer of infected articles

Means of disinfection

166 (1) Every "Board" * shall—

(a) provide proper places with necessary attendants and apparatus for the disinfection of conveyances clothing bedding or other articles which have been exposed to infection,

(b) cause conveyances, clothing or other articles brought for disinfection to be disinfected either free of charge or on payment of such charges as it may fix

(2) A Board * may notify places at which articles of clothing, bedding conveyances or other articles which has been exposed to infection shall be washed, and, if it does so, no person shall wash any such thing at any place not so notified without having previously disinfected such thing

(3) The President of a Board † may direct the destruction of any clothing, bedding or other article in the cantonment likely to retain

* Substituted by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

there is no Board the Officer 1936 But in Burma and in

infection, and may give such compensation as he thinks fit for any articles so destroyed

Making or selling of food, etc.,
or washing clothes by infected
person

167. Whoever, while suffering from, or in circumstances in which he is likely to spread, any infectious or contagious disease,—

(a) makes, carries or offers for sale in a cantonment or takes any part in the business of making, carrying or offering for sale therein any article of food or drink or any medicine or drug for human consumption or any article of clothing or bedding for personal use or wear, or

(b) takes any part in the business of the washing or carrying of clothes,

shall be punishable with fine which may extend to one hundred rupees.

168 When a cantonment is visited or threatened by an outbreak of any infectious or contagious disease, the "Board"* may, by public notice, restrict in such manner or prohibit for such period, as may be specified in the notice, the sale or preparation of any article of food or drink for human consumption specified in the notice or the sale of any flesh of any description of animals so specified.

169 (1) If a "Board"* is of opinion that the water in any well, tank, or other place is likely, if used for drinking, to engender, or cause the spread of, any disease, it may,—

(a) by public notice, prohibit the removal or use of such water for drinking,

(b) by notice in writing, require the owner or person having control of such well, tank or place to take such steps as may be directed by the notice to prevent the public from having access to or using such water, or

(c) take such other steps as it may consider expedient to prevent the outbreak or spread of any such disease

(2) In the event of a cantonment or any part of a cantonment being visited or threatened by an outbreak of any infectious or contagious disease, the Health Officer or any person authorised by him in this behalf may, without notice and at any time, inspect and disinfect any well, tank or other place from which water is or is likely to be, taken for the purposes of drinking, and may further take such steps as he thinks fit to ensure the purity of the water or to prevent the use of the same for drinking purposes

170 Where any person has died in a cantonment from any infectious or contagious disease, the Executive Officer may, by notice in writing,—

(a) require any person having charge of the corpse to convey the same to a mortuary, thereafter to be disposed of in accordance with law, or

* The word Board has been substituted by Act 24 of 1936 In Burma and in the included areas read the words Cantonment Authority

(b) prohibit the removal of the corpse from the place where death occurred except for the purpose of being buried or burned or of being conveyed to a mortuary

Hospitals and Dispensaries

Maintenance or aiding of
hospitals or dispensaries

171 (1) A "Board" * may—

(a) provide and maintain either within or without the cantonment as many hospitals and dispensaries as it thinks fit, or

(b) make upon such terms as it thinks fit to impose, a grant-in-aid to any hospital or dispensary [or veterinary hospital]† whether within or without the cantonment not maintained by it

(2) Every hospital or dispensary maintained or aided under subsection (1) shall have attached to it a ward or wards for the treatment of persons suffering from infectious or contagious diseases

(3) A medical officer, appointed in such manner as the "Central Government" ‡ may direct shall be in charge of every hospital or dispensary maintained or aided under this section

Notes—It is permissible for Cantonment Authority to provide hospitals and dispensaries for the care of the sick *Vide Aiyanger v Municipal Corporation* p 392 see also *Dillon*, Vol II p 1031

172 (1) Every hospital or dispensary maintained or aided under section 171 shall be maintained in accordance with any general or special orders of the "Central Government" ‡ for the conduct of hospitals and dispensaries or in accordance with the said orders modified in such manner as the "Central Government" ‡ thinks fit

(2) The "Board" * shall cause every such hospital or dispensary to be provided with all requisite drugs instruments apparatus furniture and appliances and with sufficient costs, bedding and clothing for in patients

Notes—Reasonable skill and care must be exercised in maintaining a hospital or dispensary *Metropolitan Asylum v Hill* 6 App Cas 193 see also (1899) A G 535 P C

173 At every hospital or dispensary maintained or aided under section 171 the sick poor of the cantonment and other inhabitants of the cantonment, suffering from infectious or contagious diseases and with the sanction of the Board*, any other sick persons may receive medical or surgical § treatment free of cost and, if treated as in-patients shall be either dieted gratuitously or if the medical officer in charge so directs shall be granted subsistence allowance on such scale as the "Board" * may fix

Free patients

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words Cantonment Authority

† In British India the words or veterinary hospital have been inserted by Act 24 of

been substituted by G I
B Order of 1937)
been inserted by Act 24 of

Provided that the subsistence allowance shall not be less than the lowest allowance for the time being fixed for the subsistence of judgment-debtors by the Provincial Government * under section 57 of the Code of Civil Procedure, 1908 †

Notes—*vide P v Provincial Corporation* 10 T L R 643 but see *Forquhar v Isle of T and Hospital*, 68 J P 319

174 Any sick person who is ineligible to receive medical "or surgical ‡ treatment free of cost in any Paving patients hospital or dispensary under section 173 may be admitted to treatment therein upon such terms as the 'Board' § thinks fit

Notes—Payment can be recovered from patients only and not from parents or guardians in the absence of a contract *Hill Corporation v MacLaren* (1898) *Local Government Chronicle* p 525 cited in *Hillsburg* Vol 23, p 434

175 (1) If the Health Officer or the medical officer in charge of a hospital or dispensary maintained or aided under section 171 has reason to believe that any person living in the cantonment is suffering from an infectious or contagious disease, he may, by notice in writing, call upon such person to attend for examination at any such hospital or dispensary at such time as may be specified in the notice and not to quit it without the permission of the medical officer in charge, and on the arrival of such person at the hospital or dispensary the medical officer in charge thereof may examine him for the purpose of satisfying himself whether or not such person is suffering from an infectious or contagious disease

Provided that, if, having regard to the nature of the disease or the condition of the person suffering therefrom or the general environment and circumstances of such person, the Health Officer or medical officer as the case may be considers that the attendance of such person at a hospital or dispensary is likely to prove unnecessary or inexpedient he shall examine such person at such person's own residence

be or in hospital until he is free from the infection or contagion found to Officer retained

Provided that if having regard to the nature of the disease or the condition of the person suffering therefrom or the general environment and circumstances of such person, he considers that the detention of such person at a hospital or dispensary is unnecessary or inexpedient, he shall discharge such person and take such measures or give such directions in the matter as he thinks necessary

* In British India the words Provincial Government have been substituted for the words Local Government by G I Order of 1937 In Burma for these words read the word Governor —*vide* G B Order of 1937

† V of 1908

‡ After the word medical the words or surgical have been inserted by Act 4 of 1936 But in Burma and in excluded areas omit these words

§ The word Board has been substituted by Act 21 of 1936 In Burma and excluded areas read the words Cantonment Authority

176 (1) If the Health Officer or the medical officer in charge of a hospital or dispensary maintained or aided under section 171 reports in writing to the Officer Commanding the station * that any person having received a notice under section 175 has refused or omitted to attend at the hospital or dispensary specified in the notice, or that such person having attended the hospital or dispensary has quitted it without the permission of such medical officer, or that any person has failed to comply with any direction given to him under section 175 the 'Officer Commanding the station * may, by order in writing, direct such person to remove from the cantonment within twenty-four hours and not to re-enter it without his permission in writing

Power to exclude from cantonment persons refusing to attend hospital or dispensary

section 175 has refused or omitted to attend at the hospital or dispensary specified in the notice, or that such person having attended the hospital or dispensary has quitted it without the permission of such medical officer, or that any person has failed to comply with any direction given to him under section 175 the 'Officer Commanding the station * may, by order in writing, direct such person to remove from the cantonment within twenty-four hours and not to re-enter it without his permission in writing

(2) No person who has under sub section (1) been ordered to remove from and not to re enter a cantonment shall enter any other cantonment in British India without the written permission of the Officer Commanding the station *

Control of Traffic for Hygienic purposes

177 (1) A "Board † may provide or prescribe suitable routes for the use of persons passing through the cantonment—

Routes for pilgrims and others

(a) on their way to or from fairs on places of pilgrimage or other places of public resort or

(b) during times when an infectious or contagious disease is prevalent, and may, by public notice, require such persons as aforesaid to use such routes and no others

(2) All routes provided or prescribed under sub-section (1) shall be clearly and sufficiently indicated by the "Board †

Special Conditions regarding Essential Services

178 (1) Whoever being a sweeper employed by a 'Board † in the absence of a written contract authorising him so to do and without reasonable cause resigns his employment or absents himself from his duty, without having given one month's notice to the 'Board † or neglects or refuses to perform his duties or any of them shall be punishable with imprisonment which may extend to one month

Conditions of service of sweepers

(2) The 'Central Government ‡ may by notification in the 'official Gazette § direct that on and from such date as may be specified in the notification the provisions of this section shall apply in the case of any specified class of servants employed by a Board † whose functions intimately concern the public health or safety

* The words within quotations have been substituted by Act VII of 1925

† The word "Board" has been substituted for the words "Cantonment Authority" by
 r by
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 by G I Order

(3) For the purpose of this section "sweeper includes any menial servant employed by a 'Board' * in the removal or disposal of filth or rubbish

⁴[178A No person shall erect or re-erect a building on any land in cantonment, except with the previous sanction of the Board, nor otherwise than in accordance with the provisions of this Chapter and of the rules and bye-laws made under this Act relating to the erection and re-erection of buildings]

CHAPTER XI

CONTROL OVER BUILDINGS, STREETS, BOUNDARIES, TREES, ETC.

Buildings

179 (1) Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice[†] in writing of his intention to the 'Board'.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who—

(a) makes any material alteration or enlargement of any building, or

(b) converts into a place for human habitation any building not originally constructed for that purpose, or

(c) converts into more than one place for human habitation a building originally constructed as one such place, or

(d) converts two or more places of human habitation into a greater number of such places, or

(e) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation, or

(f) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage sanitation or hygiene or

(g) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act

Notes—The Building Regulations have for their purpose not only the protection of life limb and property but also the preservation of public health—*Livanger's Municipal Corporation* p 344

180 (1) A person giving the notice required by section 179 shall specify the purpose for which it is intended to use the building to which such notice relates

(2) No notice shall be valid until the information required under sub-section (1) and any further information and plans which may be

Act 2

† The words "give notice" apply for sanction by giving notice. I have substituted for the words "give notice" by Act 24 of 1936 in Burn and in excluded areas for these words read the words "give notice".

required under bye-laws made under this Act have been furnished to the satisfaction of the "Board"* along with the notice.

181. (1) The "Board"* may either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely —

- (a) the free passage or way to be left in front of the building ,
 - (b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire ,
 - (c) the ventilation of the building, the minimum cubic area of the rooms and the number and height of the storeys of which the building may consist ,
 - (d) the provision and position of drains, latrines, urinals, cess-pools or other receptacles for filth ,
 - (e) the level and width of the foundation, the level of the lowest floor and the stability of the structure ,
 - (f) the line of frontage with neighbouring buildings if the building abuts on a street ,
 - (g) the means to be provided for egress from the building in case of fire ;
 - (h) the materials and method of construction to be used for external and party wall for rooms, floors, fireplaces and chimneys ;
 - (i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on , and
 - (j) any other matter affecting the ventilation and sanitation of the buildings ,
- and the person erecting or re-erecting the building shall obey all such written directions in every particular

[(2) The Board may refuse to sanction the erection or re-erection of any building, either on grounds sufficient in the opinion of the Board affecting the particular building, or in pursuance of a general scheme sanctioned by the Officer Commanding-in-Chief, the Command, restricting the erection or re-erection of buildings within specified limits for the prevention of overcrowding or in the interests of persons residing within such limits or for any other public purpose

(3) The Board before sanctioning the erection or re-erection of a building on land which is under the management of the Military Estates Officer, shall refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of Government to such erection or re-erection , and the Military Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him

(4) The Board may refuse to sanction the erection or re-erection of any building—

- (a) when the land on which it is proposed to erect or re-erect

* The word "Board" has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'

the building is held on a lease from the 'Crown' * if the erection or re-erection constitutes a breach of the terms of the lease, or

(b) when the land on which it is proposed to erect or re-erect the building is not held on a lease from Government, if the right to build on such land is in dispute between the person applying for sanction and the Government

(5) If the Board decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom notice was given

(6) Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter, by a written communication, sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally

Provided that, in any case to which the provisions of sub section (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received the report referred to in that sub-section]†

Re erection — is to the meaning of the word 're-erection' vide *Hobbs v Dance*, L R 9 C P 80 *Siel v Sunterland Corporation*, 25 J P 647

Clause (a) — Vide 3 Pcm L R 842

Clause (b) — *Daxter v Pedford* 1 T L R 425 61 L J Q B 164

Clause (d) — *Barton v Acton* 51 J P 566

Sub section (5) — Vide 9 M L J 330 1 T L R 323 The date is computed from

1930 Lah 872

182 (1) No compensation shall be claimable by any person for
 Compensation any damage or loss which he may sustain
 in consequence of the refusal of the

* Substituted in British India by G I Order of 1937.

† In British India sub sections (a) (c) have been substituted for the old sub sections (2-4) by Act 24 of 1936. In Burma and in excluded areas for these sub sections read the old

may be unconditionally

purpose

"Board*" of sanction to the erection of any building or in respect of any direction issued by it under sub-section (1) of section 181.

(2) The "Board"* shall make compensation to the owner of any building for any actual damage or loss sustained by him in consequence of the prohibition of the re-erection of any building or of its requiring any land belonging to him to be added to the street.

Provided that the "Board" * shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation

183. Every sanction for the erection or re-erection of a building

Lapse of sanction

given or deemed to have been given by the 'Board' * as hereinbefore provided

shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun "unless the Board on application made therefor has allowed an extension of that period" †

Notes—A sanction given to the owner can be availed of by his successor in the property 12 Bom L R 274 9 P R 1905=14 P L R 1905 After that period the sanction becomes void (1904) 1 Q B 468 88 L T 592 see 9 P R 1905=14 P L R. 1905

‡[**183A** A Board, when sanctioning the erection or re-erection of

Period of completion of a building as hereinbefore provided shall specify a reasonable period after the work has commenced within which the erection

or re-erection is to be completed, and, if the erection or re-erection is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the Board on application made therefor has allowed an extension of that period

Provided that not more than two extension shall be allowed by the Board in any case]

184 Whoever begins, continues or completes the erection or re-erection of a building—

(a) without having given a valid notice as required by sections 179 and 180, or before the building has been sanctioned or is deemed to have been sanctioned or

(b) without complying with any direction made under sub-section (1) of section 181, or

(c) when sanction has been refused, or has ceased to be available, [or has been suspended by the Officer Commanding-in-Chief, the

urmas and in
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by Act 24 of
anner herein

before provide ' and in excluded areas

† Section 183A has been added by Act 24 of 1936 and is in force only in British India and not in Burma and in excluded areas

Command, under clause (b) of sub-section (1) of section 52]* shall be punishable with fine which may extend to five hundred rupees

Notes.—It is not proper to substitute conviction under s. 268 for one under s. 181 (b) A. I. R. 1934 Oudh 29. Where non-compliance with a direction under s. 181 (1) is not punishable. *Ibid*. No penalty is provided under s. 181 for continuing failure. *Ibid*.

†[185 (1) A 'Board ‡ may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the 'Board ‡ considers that such erection or re-erection is an offence under section 184 and may in any such case [or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 184, within six months of the completion of such erection or re-erection]* in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected

Provided that the 'Board ‡ may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable

*[Provided further that the Board shall not without the previous concurrence of the Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board, and

*[(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under section 181 sanctioning the erection or re-erection has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of section 52, and shall in any such case in like manner direct the demolition or alteration, as the case may be of the building or any part thereof so erected or re-erected where the Officer Commanding-in-Chief, the Command thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him

*[Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the Officer Com-

able time 33 P. L. R. 380—33 Cr. L. J. 336. Offender can be prosecuted for disobedience of notice. *Ibid*

Power to make bye-laws

186 A 'Board ‡ may make bye-laws prescribing—

* The words within brackets have been inserted by Act 24 of 1936 which words are

35 (1) and sub-section (1) has been in excluded areas read sub-section

excluded areas read 'Canto

(a) the manner in which notice of the intention to erect or re-erect a building in the cantonment shall be given to the "Board" * and the information and plans to be furnished with the notice ,

(b) the type or description of buildings which may or may not, and the purpose for which a building may or may not, be erected or re-erected in any specified area or areas ,

(c) the minimum cubic capacity of any room or rooms in a building which is to be erected or re-erected , †

(d) the fees payable on provision by the "Board * of plans or specifications of the type of buildings which may be erected in the cantonment or any part thereof ,

†[(e) the circumstances in which a mosque, temple or church, or other sacred building may be erected or re-erected , and

(f) with reference to the erection or re-erection of buildings, or of any class of building, all or any the following matters, namely, —

(i) the line of frontage where the building abuts on a street ,

(ii) the space to be left about the building to secure free circulation of air and facilities for scavenging and for the prevention of fire ,

(iii) the materials and method of construction to be used for external and party-walls, roofs and floors ,

(iv) the position, the material and the method of construction of fire places, chimneys, drains, latrines, privies, urinals and cesspools ,

(v) height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on ,

(vi) the level and width of the foundation, the level of the lowest floor and the stability of the structure ,

(vii) the number and height of the storeys of which the building may consist ,

(viii) the means to be provided for egress from the building in case of fire ,

(ix) the safeguarding of wells from pollution , or

(x) the materials and method of construction to be used for godowns intended for the storage of food grains in excess of fifty maunds in order to render them rat-proof]

Notes —A local authority is bound by the bye laws and cannot waive their requirements unless the bye laws themselves give it a dispensing power or discretion — *Aiyangar's Municipal Corporation* p 328 citing *Baxter v Bedford* 1 T L R 421 *R v Major*, 53 J P 788, 61 L J Q B 164

187. (1) No owner or occupier of any building in a cantonment shall, without the permission in writing of the "Board," * add to or place against or in front of the building any projection or structure overhanging, projecting into, or encroaching on, any street or any drain, sewer or aqueduct therein

(2) The "Board * may, by notice in writing, require the owner or occupier of any such building to alter or remove any such projection or encroachment as aforesaid

* The word 'Board' has been substituted by Act 24 of 1936 In Burma and in ex

cluded areas after clause (d) new Burma and in excluded areas and omit clauses (e) and (f)

Provided that, in the case of any projection or encroachment lawfully in existence at the commencement of this Act, the "Board"* shall make compensation for any damage caused by the removal or alteration

(3) The "Board" * may, by order in writing give permission to the owners or occupiers of buildings in any particular street to put up open verandahs, balconies or rooms projecting from any upper storey thereof to an extent beyond the line of the plinth or basement wall at such height from the level ground or street as may be specified in the order

Notes — A projection is not a fixture 15 C W N 730 = 13 C L J 611 Similar provisions are to be found in all other Municipal Acts *vide* Ryl Un Cr C 802 One is

erected by the Executive Officer is sufficient 35 P L R 414 A I R 1934 Lah 510

188 A "Board" * may, by notice in writing, require any person who has, without its permission in writing, newly erected or re-erected any building over any public sewer, drain, culvert, water-course or water-pipe in the cantonment to pull down or otherwise deal with the same as it thinks fit

Notes — Unauthorized construction of buildings over drains is absolutely prohibited *Vide* Halsbury Vol 25 p 765

189 (1) A "Board" * may, by notice in writing require the owner or lessee of any building or land in any street, at his own expense and in such manner as the "Board" * thinks fit, to put up and keep in good condition proper troughs and pipes for receiving and carrying rain water from the building or land and for discharging the same or to establish and maintain any other connection or communication between such building or land and any drain or sewer

(2) For the purpose of efficiently draining any building or land in the cantonment, the "Board" * may, by notice in writing, require the owner or lessee of the building or land—

(a) to pave, with such materials and in such manner as it thinks fit, any courtyard, alley or passage between two or more buildings, or

(b) to keep any such paving in proper repair

Notes — *Vide* 28 C 268—15 C W N 412

190 A "Board" * may attach to the outside of any building, or to any tree in the cantonment, brackets for lamps in such manner as not to occasion injury thereto or inconvenience

Notes — Ordinarily the local authorities have no right to fix lamps to private houses *Metc v London* 37 L T Jo 181 This section expressly gives power to a Board to attach brackets for lamps

* The word Board has been substituted by Act 21 of 1936 In Burma and included areas read the words Cantonment Authority for the word Board

Streets.

191 A "Board"* may, by order in writing, permit the temporary occupation of any street, or of any land vested in the 'Board,'* for the purposes of depositing any building materials or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of the public, and may charge a fee for such permission and may in its discretion withdraw such permission

ration, p 284

192 (1) A "Board"* shall not permanently close any street, or open any new street without the previous sanction of the "Officer Commanding-in-Chief, the Command"†

(2) A 'Board'* may, by public notice, temporarily close any street or any part of a street for repair or for the purpose of carrying out any work connected with drainage, water-supply or lighting or any other work which it is by or under this Act required or permitted to carry out

Provided that where, owing to any works or repairs or from any other cause, the condition of any street or of any water-works, drain, culvert or premises vested in the "Board,"* is such as to be likely to cause danger to the public, the 'Board'* shall—

(a) take all reasonable means for the protection of the adjacent buildings and land and provide reasonable means of access thereto,

(b) cause sufficient barriers or fences to be erected for the security of life and property, and cause such barriers or fences to be sufficiently lighted from sunset to sunrise

Notes—The Common Law rule is "once a highway always a highway" The local bodies are not entitled to stop a highway 2 C 425 7 A 723

193 (1) A "Board"* may cause a name to be given to any street and to be affixed on any building in the cantonment in such place as it thinks fit, and may also cause a number to be affixed to any such building

(2) Whoever destroys, pulls down, defaces or alters any such name or number or puts up any name or number differing from that put up by the order of the 'Board'* shall be punishable with fine which may extend to twenty rupees.

(3) When a number has been affixed to any building under subsection (1), the owner of the building shall maintain the number in order, and shall replace it if removed or defaced, and if he fails to do so the Board may by notice in writing require him to replace it ‡

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in Cantonment Authority "

by Act 21 of 1936, In Burma

Notes—Old names can also be changed by a local body *Anderson v Dublin Corporation*, 15 L R 410

Boundaries and Trees

194 (1) No boundary wall, hedge or fence of any material or description shall be erected in a cantonment without the permission in writing of the "Board" *
 Boundary wall: hedges and fences

(2) A "Board" * may, by notice in writing, require the owner or lessee of any land in the cantonment—

(a) to remove from the land any boundary wall, hedge or fence which is, in its opinion, unsuitable unsightly or otherwise objectionable, or

(b) to construct on the land sufficient boundary walls, hedges or fences of such material description or dimensions as may be specified in the notice, or

(c) to maintain the boundary walls hedges or fences of such lands in good order

Provided that, in the case of any such boundary wall, hedge or fence which was erected with the consent or under the orders of the "Board" * or which was in existence at the commencement of this Act, the "Board" * shall make compensation for any damage caused by the removal thereof

(3) The "Board" * may, by notice in writing require the owner, lessee or occupier of any such land to cut or trim any hedge on the land in such manner and within such time as may be specified in the notice

Notes—Fencing can be removed by the local authority after giving notice *Vile* 21 M 246

195 (1) Where, in the opinion of a "Board" *, the felling of any tree of mature growth standing in a private enclosure in the cantonment is necessary for any reason, the "Board" * may, by notice in writing require the owner, lessee or occupier of the land to fell the tree within such time as may be specified in the notice
 Felling lopping and trimming of trees

(2) A "Board" * may—
 (a) cause to be lopped or trimmed any tree standing on land in the cantonment which belongs to 'the Crown †, or

(b) by public notice require all owners lessees or occupiers of land in the cantonment, or by notice in writing require the owner, lessee or occupier of any such land to lop or trim in such manner as may be specified in the notice, all or any trees standing on such land or to remove any dead trees from such land

Notes—The provision as regards notice must be strictly complied with 17 C W N (xi)

196 Whoever without the permission in writing of the "Board" *, digs up the surface of any open space in the cantonment which is not private property, shall be punishable with fine which may extend to twenty
 Digging of public land

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read Cantonment Authority

† The word the Crown has been substituted in British India by G I Order of 193 In Burma omit these words

rupees, and in the case of a continuing offence, "with an additional fine,"* which may extend to five rupees for every day after the first during which the offence continues

197 (1) If, in the opinion of a "Board",† the working of a quarry in the cantonment, or the removal of stone, earth or other material from the soil in any place in the cantonment, is dangerous to persons residing in or frequenting the neighbourhood of such quarry or place, or creates, or is likely to create, a nuisance, the 'Board' † may, by notice in writing, prohibit the owner, lessee or occupier of such quarry or place or the person responsible for such 'working * or removal, from continuing or permitting the working of such quarry or the moving of such material, or require him to take such steps in the matter as the "Board" † may direct for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom

(2) If in any case referred to in sub-section (1), the "Board" † is of opinion that such a course is necessary in order to prevent imminent danger, it may by order in writing, require a proper hoarding or fence to be put up for the protection of passers-by

CHAPTER XII

MARKETS, SLAUGHTER HOUSES, TRADES AND OCCUPATIONS

198 (1) A "Board" † may provide and maintain, either within or without the cantonment, public markets and public slaughter-houses, to such number as it thinks fit, together with stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in or frequenting such markets or slaughter-houses, and may provide and maintain in any such market buildings, places and machines, weights scales and measures for the weightment or measurement of goods sold therein

(2) When such market or slaughter-house is situated beyond cantonment limits the "Board" † shall have the same power for the inspection and proper regulation of the same as if it were situated within those limits

(3) The 'Board' † may at any time, by public notice, close any public market or public slaughter-house or any part thereof

(4) Nothing in this section shall be deemed to authorise the establishment of a public market or public slaughter-house within the limits of any area administered by any local authority other than the "Board" † without the permission of such local authority or otherwise than on such conditions as such local authority may approve

* Substituted by Act V of 1930

buying or selling 29 M 18o A butcher s
216 The power to establish and regulate
is delegated to various local authorities

* Substituted by Act V of 1930

† The word 'Board' has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words Cantonment Authority

199 (1) No person shall, without the general or special permission in writing of the 'Board',* sell or expose for sale any animal or article in any public market.

(2) Any person contravening the provisions of this section, and any animal or article exposed for sale by such person may be summarily removed from the market by or under the orders of the Executive Officer or any officer or servant of the 'Board'* authorised by it in this behalf

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Lery of stallages, rents and fees

200 A "Board" may—

(a) charge for the occupation or use of any stall, shop, standing shed or pen in a public market, or public slaughter-house, or for the right to expose goods for sale in a public market, or for weighing or measuring goods sold therein, or for the right to slaughter animals in any public slaughter-house, such stallages, rents and fees as it thinks fit; or

(b) with the sanction of the "Officer Commanding-in Chief, the Command",† farm the stallages, rents and fees leviable as aforesaid or any portion thereof for any period not exceeding one year at a time, or

(c) put up to public auction, or with the sanction of the "Officer Commanding-in Chief, the Command",† dispose of by private sale, the stall, shop, standing shed or pen for such term and on such

conditions as it thinks fit

Notes —When a contract is made outside the market no toll is to be paid *Lambert v Roule* (1914) 1 K B 38 Where relationship between parties is that of landlord and tenant s 200 is applicable and not section 210 A I R 1933 Lah 517

201 A copy of the table of stallages rents and fees, if any, leviable in any public market or public slaughter-house and of the bye-laws made under this Act for the purpose of regulating the use of such market or slaughter-house, printed in the English language and in such other language or languages as the 'Board' may direct, shall be affixed in some conspicuous place in the market or slaughter-house

Notes —In the absence of any such table a reasonable sum should be paid —*Jude Halsbury's Laws* Vol 20 pp 38 & 39

202 (1) No place in a cantonment other than a public market or slaughter-house, shall be used as a market or slaughter-house, unless such place has been licensed as a market or slaughter-house, as the case may be, by the "Board":*

Private markets and slaughter houses

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'

† Substituted by Act XXXV of 1926

Provided that nothing in this sub-section shall apply in the case of a slaughter-house established and maintained by the Government.

(2) Nothing in sub-section (1) shall be deemed—

(a) to restrict the slaughter of any animal in any place on the occasion of any festival or ceremony, subject to such conditions as to prior or subsequent notice as the Executive Officer with the previous sanction of the District Magistrate may, by public or special notice imposed in this behalf or

(b) to prevent the Executive Officer with the sanction of the 'Board * from setting apart places for the slaughter of animals in accordance with religious custom when such animals are slaughtered for consumption by the troops or for the purpose of the sale of the flesh thereof to the troops

(3) Whoever omits to comply with any condition imposed by the Executive Officer under clause (a) of sub-section (2) shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to ten rupees for every day after the first during which the offence is continued

Notes—A slaughter house is a place which is used for the preparation of beasts for the market G M H C R App 18 Any place incidentally used for that purpose is also a slaughter house *Hides v Littlejohn* 60 J P 101 The place where cattle are occasion

Elias v Night
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air 741 A private

203 (1) A "Board * may charge such fees as it thinks fit to impose for the grant of a licence to any person to open a private market or private slaughter house in the cantonment and may grant such licence subject to such

Conditions of grant of licence for private market or slaughter house

conditions consistent with this Act and any bye laws made thereunder as it thinks fit to impose

(2) The "Board * may refuse to grant any such licence without giving reasons for such refusal

204 (1) Any person who keeps open for public use any market or slaughter-house in respect of which a licence is required by or under this Act, without obtaining licence therefor, or while the licence therefor is suspended or after the same has been cancelled, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence with an additional fine which may extend to five rupees for every day after the first during which the offence is continued

Penalty for keeping market or slaughter house open without licence etc

(2) When a licence to open a private market or private slaughter-house is granted or refused or is suspended or cancelled the 'Board * shall cause a notice of the grant refusal, suspension or cancellation to be posted in English, and in such other language or languages as it thinks necessary, in some conspicuous place by or near the entrance to the place to which the notice relates

Notes—A person cannot be punished for selling meat in his private premises Q v *Lakshman Rat Un Cr C 397* see also L B R (1893 1900) 353 U B R (1901) 2nd Qr Munic pal 1

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in excluded areas read Cantonment Authority

205 Whoever, knowing that any market or slaughter-house has been opened to the public without a licence having been obtained therefor when such licence is required by or under this Act, or that the licence granted therefor is for the time being suspended or that it has been cancelled, sells or exposes for sale any article in such market, or slaughters any animal in such slaughter-house, shall be punishable with fine which may extend to fifty rupees and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first during which the offence is continued

206 (1) Where, in the opinion of the "Board,"* it is necessary on sanitary grounds so to do, it may, by public notice, prohibit for such period, not exceeding one month, as may be specified in the notice, or for such further period, not exceeding one month, as it may specify by a like notice, the use of any private slaughter-house specified in the notice, or the slaughter therein of any animal of any description so specified

(2) A copy of every notice issued under sub-section (1) shall be conspicuously posted in the slaughter-house to which it relates

Notes —A reasonable notice should be given of the revocation of licence G W R Cr 77

207 (1) Any servant of a "Board,"* authorised by order in writing in this behalf by the President of the Board,† or the Health Officer, may, if he has reason to believe that any animal has been, is being, or is about to be slaughtered in any place in contravention of the provisions of this Chapter, enter into and inspect any such place at any time whether by day or by night

(2) Every such order shall specify the place to be entered and the locality in which the same is situated and the period, which shall not exceed seven days, for which the order is to remain in force

208 A "Board"* may, with the approval of the "Central Government, ‡ make bye-laws consistent with this Act to provide for all or any of the following matters, namely —

(a) the days on and the hours during, which any private market or private slaughter-house may be kept open for use,

(b) the regulation of the design, ventilation and drainage of such markets and slaughter-houses and the material to be used in the construction thereof,

(c) the keeping of such markets and slaughter-houses and lands and buildings appertaining thereto in a clean and sanitary condition, the

* 936 In Burma and in ex

mitted by Act 21 of 1936 In retained have been substituted by G I read the word Governor"

removal of filth and refuse therefrom, and the supply therein of pure water and of a sufficient number of latrines and urinals for the use of persons using or frequenting the same ;

(d) the manner in which animals shall be stalled at a slaughter-house ;

(e) the manner in which animals may be slaughtered ;

(f) the disposal or destruction of animals offered for slaughter which are, from disease or any other cause, unfit for human consumption , and

(g) the destruction of carcasses which from disease or any other cause are found after slaughter to be unfit for human consumption

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Trades and Occupations.

209 (1) A "Board" * may provide suitable places for the exercise of washermen of their calling, and may require payment of such fees for the use thereof as it thinks fit

(2) Where the "Board" * has provided such places as aforesaid it may, by public notice, prohibit the washing of clothes by washermen at any other place in the cantonment

Provided that such prohibition shall not be deemed to apply to the washing by a washerman of his own clothes or of the clothes of any other person who is an occupier of the place at which they are washed.

(3) Whoever contravenes any prohibition contained in a notice issued under sub-section (2) shall be punishable with fine which may extend to twenty rupees.

Notes —The local authority may also appoint suitable places for the exercise by washermen of their calling —*Aiyanger's Municipal Corporation* p 361. As regards the meaning of the word 'place', vide 3 Bom L R 436 15 Bom L R 659

210 (1) No person of any of the following classes, namely —

(a) butchers and vendors of poultry, game or fish ;

(b) persons keeping pigs for profit, and dealers in the flesh of pigs which have been slaughtered in India ,

(c) persons keeping milch cattle or milch goats for profit ;

(d) persons keeping for profit any animals other than pigs, milch cattle or milch goats ,

(e) dairymen, buttermen and makers and vendors of ghee ;

(f) makers of bread, biscuits or cake and vendors of bread, biscuits or cake made in India ;

(g) vendors of fruit or vegetables ,

(h) manufacturers of aerated or other portable waters or of ice or ice-cream, and vendor of the same .

* The word "Board" has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority "

**(i)* vendors of any medicines, drugs or articles of food or drink for human consumption (other than the flesh of pigs, milk, butter, bread, biscuits, cake, fruit, vegetables, aerated or other portable waters, or ice or ice-cream) which are of a perishable nature ;

**(j)* vendors of water to be used for drinking purposes ;

**(k)* washermen ;

**(l)* dealers in hay, straw, wood, charcoal or other inflammable material ;

**(m)* dealers in fire-works, kerosene oil, petroleum or any other inflammable oil or spirit ;

**(n)* tanners and dyers ;

**(o)* persons carrying on any trade or occupation from which offensive or unwholesome smells arise ;

**(p)* vendors of wheat, rice and other grain or of flour,†

(q) makers and vendors of fire-arms, and†

[*(r)*

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from the "Board."†

(2) A licence granted under sub-section (1) shall be valid [until the end of the year in which it is issued]§ and the grant of such licence shall not be withheld by the "Board"‡ unless it has reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to the public

(3) Notwithstanding anything contained in sub-section (1),—

(a) no person who was, at the commencement of this Act, carrying on his trade, calling or occupation in any part of a cantonment shall be bound to apply for a licence for carrying on such trade or occupation in that part until he has received from the "Board"‡ not less than three months' notice in writing of his obligation to do so, and if the "Board"‡ refuses to grant him a licence, it shall pay compensation for any loss incurred by reason of such refusal,

(b) no person shall be required to take out a licence for the sale or storage of petroleum or for the sale or possession for sale of poisons or white arsenic in any case in which he is required to take out a licence for such sale, storage or possession for sale by or under the Indian Petroleum Act, 1899,|| or the Poisons Act, 1919¶

(4) The "Board"‡ may charge for the grant of licences under this section such fees [not exceeding the cost of granting the licences]** as it may fix with the previous sanction of the "Central Government"††

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‡ The word 'Board' has been substituted by Act 24 of 1936 In Burma and in ex-
cluded areas read the words 'Cantonment Authority'

§ In British India the words within brackets have been substituted by Act 24 of 1936.
In Burma for these words read the words 'for one year'

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** The words within brackets have been inserted by Act 24 of 1936 In Burma and in

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Notes — A licence issued for regulating trades and occupations must be distinguished from the taxes. The power to license and regulate particular branches of business or specified matters is what is usually called in American text books the police power and the exercise of the police power carries with it the power to collect fees for the issue of licences — *Atjanger's Municipal Corporation* p 136. Such right must be conferred by a statute — *Dillon* Vol II. Licence is required only for such trades which are specified in the Act 19 M L J 22-4 M L T 321. No prosecution for not obtaining licence is maintainable where the licence fee is not legally recoverable 17 C W N 531. Bamboo is inflammable wood A I R 1934 All 987. A merchant who deals with bamboos rafters etc is a dealer of wood *Ibid*.

211 A licence granted to any person under section 210 shall specify the part of the cantonment in which the licensee may carry on his trade calling or occupation and may regulate the hours and manner of transport within the cantonment of any specified articles intended for human consumption and may contain any other conditions which the Board* thinks fit to impose in accordance with bye-laws made under this Act

General Provisions

212 If a 'Board * is satisfied that any place used under a licence granted under this Chapter is a nuisance or is likely to be dangerous to life health or property, the 'Board * may by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations additions, or improvements as will in the opinion of the Board, * render it no longer a nuisance or dangerous from being prosecuted where the exercise of Municipal Corporation p 337. Vide public nuisance is created by the exercise W R Cr 6

213 Whoever carries on any trade, calling or occupation for which a licence is required without obtaining a licence therefor or while the licence therefor is suspended or after the same has been cancelled and whoever, after receiving a notice under section 212, uses or allows to be used any building or place in contravention thereof shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to forty rupees for every day after the first during which the offence is continued

* The word Board has been substituted by Act 21 of 1936. In Burma and in excluded areas read Cantonment Authority

three months' notice in writing of his obligation to do so and if the Cantonment Authority refuses to grant him a license, it shall pay compensation for any loss incurred by reason of such refusal. A. I. R. 1939 Lab. 927

214. Whoever feeds or allows to be fed on filthy or deleterious substances any animal, which is kept for the purpose of supplying milk to, or which is intended to be used as food for, the inhabitants of a cantonment or allows it to graze in any place in which grazing has, for sanitary reasons, been prohibited by public notice by the "Board,"* shall be punishable with fine which may extend to fifty rupees.

Notes.—No person can feed or permit any animal to be fed with offensive matter or sewage.—*Mysinger & Municipal Corporation*, p. 358

Entry, Inspection and Seizure

215 (1) The President or the Vice-President,† the Executive Officer, the Health Officer, the Assistant Health Officer, or any other officer or servant of a "Board"* authorised by it in writing in this behalf,—

(a) may at any time enter into any market building, shop, stall or other place in the cantonment for may inspect, any animals, article or drink or for medicine, whether exposed or hawked about for sale, or deposited in or brought to any place for the purpose of sale, or of preparation for sale, or any utensil or vessel for preparing, manufacturing or containing any such article, or thing, and may enter into and inspect any place used as a slaughter-house and may examine any animal or article therein

(b) may seize any such animal, article or thing which appears to him to be diseased, or unwholesome or unfit for human food or drink or medicine, as the case may be, or to be adulterated or to be not what it is represented to be, or any such utensil or vessel which is of such a kind or in such a state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human food or for medicine, as the case may be

(2) Any article seized under sub-section (1) which is of a perishable nature may, under the orders of the Health Officer or the Assistant Health Officer, forthwith be destroyed if, in his opinion, it is diseased, unwholesome or unfit for human food, drink or medicine, as the case may be

(3) Every animal, article, utensil, vessel or other thing seized under sub-section (1), shall, if it is not destroyed under sub-section (2), be taken before a Magistrate

(4) The owner or person in possession, at the time of seizure under sub-section (1), of any animal or carcase which is diseased or of any article or thing which is unwholesome or unfit for human food, drink or medicine, as the case may be, or is adulterated or is not what it is represented to be, or of any utensil or vessel which is of such kind or in such state as is described in clause (b) of sub-section (1), shall be

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

† After this the words of a Board have been omitted by Act 24 of 1936 In Burma and in excluded areas the words of a Board have been retained

211 A licence granted to any person under section 210 shall specify the part of the cantonment in which the licensee may carry on his trade calling or occupation, and may regulate the hours and manner of transport within the cantonment of any specified articles intended for human consumption, and may contain any other conditions which the 'Board' * thinks fit to impose in accordance with bye-laws made under this Act.

General Provisions

212 If a 'Board' * is satisfied that any place used under a licence granted under this Chapter is a nuisance or is likely to be dangerous to life, health or property, the 'Board' * may by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations, additions, or improvements as will, in the opinion of the 'Board,' * render it no longer a nuisance or dangerous.

Notes—A licence will not protect a licensee from being prosecuted where the exercise of the trade is a public nuisance. *Idé Langer s Municipal Corporation* p 337. *Vide also Adams v Ursell* (1913) 2 Ch 269. When public nuisance is created by the exercise of any trade the licensee must stop the trade 16 W R Or G.

213 Whoever carries on any trade, calling or occupation for which a licence is required without obtaining a licence therefor or while the licence therefor is suspended or after the same has been cancelled and whoever, after receiving a notice under section 212, uses or allows to be used any building or place in contravention thereof, shall be punishable with fine which may extend to two hundred rupees and, in the case of a continuing offence, with an additional fine which may extend to forty rupees for every day after the first during which the offence is continued.

Notes—In a prosecution for carrying on trade etc without a licence the Magistrate need not consider whether Municipal authorities refused the accused a licence illegally. *Rat Un Cr* 729. Where a butcher having no licence as required by ss 213 and 216 of the Act was prosecuted for his trade for his business in a shop for 50 or 60 years and therefore does not require a licence is obviously wrong because s 210 (3) provides that no person who was at the commencement of the Cantonments Act of 1924 carrying on his trade, calling or occupation in any part of the cantonment shall be bound to apply for carrying on such trade or occupation in that part until he has received from the Cantonment Authority not less than

* The word Board has been substituted by Act 24 of 1936. In Burma and in excluded areas read "Cantonment Authority".

three months' notice in writing of his obligation to do so, and if the Cantonment Authority refuses to grant him a license, it shall pay compensation for any loss incurred by reason of such refusal. A. I. R. 1938 Lah 927.

214. Whoever feeds or allows to be fed on filthy or deleterious substances any animal, which is kept for the purpose of supplying milk to, or which is intended to be used as food for, the inhabitants of a cantonment or allows it to graze in any place in which grazing has, for sanitary reasons, been prohibited by public notice by the "Board,"* shall be punishable with fine which may extend to fifty rupees

Notes—No person can feed or permit any animal to be fed with offensive matter or sewage—*Ayringer v Municipal Corporation*, p. 358

Entry, Inspection and Seizure

215 (1) The President or the Vice-President,† the Executive Officer, the Health Officer, the Assistant Health Officer, or any other officer or servant of a "Board"* authorised by it in writing in this behalf,—

(a) may at any time enter into any market, building, shop, stall or other place in the cantonment for the purpose of inspecting, and may inspect, any animals, article or thing intended for human food or drink or for medicine, whether exposed or hawked about for sale, or deposited in or brought to any place for the purpose of sale, or of preparation for sale, or any utensil or vessel for preparing, manufacturing or containing any such article, or thing, and may enter into and inspect any place used as a slaughter-house and may examine any animal or article therein

(b) may seize any such animal, article or thing which appears to him to be diseased, or unwholesome or unfit for human food or drink or medicine, as the case may be, or to be adulterated or to be not what it is represented to be, or any such utensil or vessel which is of such a kind or in such a state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human food or for medicine, as the case may be

(2) Any article seized under sub-section (1) which is of a perishable nature may, under the orders of the Health Officer or the Assistant Health Officer, forthwith be destroyed if, in his opinion, it is diseased, unwholesome or unfit for human food, drink or medicine, as the case may be

(3) Every animal, article, utensil, vessel or other thing seized under sub-section (1), shall, if it is not destroyed under sub-section (2), be taken before a Magistrate

(4) The owner or person in possession, at the time of seizure under sub-section (1), of any animal or carcass which is diseased or of any article or thing which is unwholesome or unfit for human food, drink or medicine, as the case may be or is adulterated or is not what it is represented to be, or of any utensil or vessel which is of such kind or in such state as is described in clause (b) of sub-section (1), shall be

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words Cantonment Authority

† After this the words of a Board have been omitted by Act 24 of 1936 In Burma and in excluded areas the words 'of a Board' have been retained

punishable with fine which may extend to one hundred rupees, and the animal, article, utensil, vessel or other thing shall be liable to be forfeited to the "Board" * or to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for the preparation of food, drink or medicine, as the case may be

Explanation I—If any such article, having been exposed or stored in, or brought to, any place mentioned in sub-section (1) for sale as ghee, contains any substance not exclusively derived from milk, it shall be deemed, for the purposes of this section, to be an article which is not what it is represented to be

Explanation II—Meat subjected to the process of blowing shall be deemed to be unfit for human food

Explanation III—The article of food or drink shall not be deemed to be other than what it is represented to be merely by reason of the fact that there has been added to it some substance not injurious to health

Provided that—

(a) such substance has been added to the article because the same is required for the preparation or production thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight or measure of the food or drink or conceal the inferior quality thereof, or

(b) in the process of production, preparation or conveyance of such article of food or drink, the extraneous substance has unavoidably become intermixed therewith, or

(c) the owner or person in possession of the article has given sufficient notice by means of a label distinctly and legibly written or printed thereon or therewith, or by other means of a public description that such substance has been added, or

(d) such owner or person has purchased the article with a written warranty that it was of a certain nature, substance, and quality and had no reason to believe that it was not of such nature, substance and quality, and has exposed it or hawked it about or brought it for sale in the same state and by the same description as that in and by which he purchased it

Import of Cattle and Flesh

216 (1) No person shall without the permission in writing of the
 Import of cattle and flesh 'Board,' * bring into a cantonment any animal intended for human consumption, or the flesh of any animal slaughtered outside the cantonment otherwise than in a slaughter-house maintained by the Government or the "Board" *

(2) Any animal or flesh brought into a cantonment in contravention of sub-section (1) may be seized by the Executive Officer or by any servant of the "Board" * and sold or otherwise disposed of as the "Board" * may direct, and, if it is sold, the sale proceeds may be credited to the cantonment fund

(3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to fifty rupees

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in excluded areas read 'Cantonment Authority'

(4) Nothing in this section shall be deemed to apply to cured or preserved meat or to animals driven or meat carried through a cantonment for consumption outside thereof, or to meat brought into a cantonment by any person for his immediate domestic consumption

Provided that the "Board * may, by public notice, direct that the provisions of this section shall apply to cured or preserved meat of any specified description or brought from any specified place

Notes — Where a butcher having no licence as required by ss 213 and 216 of the
required for his
actually receives
118 Ind Cvs

CHAPTER XIII

WATER SUPPLY, DRAINAGE AND LIGHTING

Water-Supply

217 (1) In every cantonment where a sufficient supply of pure water for domestic use does not already exist, the "Board * shall provide or arrange Maintenance of water supply for the provision of such a supply

(2) The "Board * shall, as far as possible, make adequate provision that such supply shall be continuous throughout the year, and that the water shall be at all times pure and fit for human consumption

218. (1) The 'Board * may with the previous sanction of the "Central Government",† by public notice, Control over sources of public water supply declare any lake, stream, spring, well, tank, reservoir or other source, whether within or without the limits of the cantonment (other than a source of water-supply under the control of the Military Engineer‡ Services or the Public Works Department) from which water is or may be made available for the use of the public in the cantonment to be a source of public water-supply

(2) Every such source shall be under the control of the 'Board' *

Notes — Vide *Smith v Archibald* 5 A C 480 *Holmfirth v Shore* 59 J P 314, *Knucey v Redreth Rural District Council* (1904) 1 K B 382

219 The "Board * may, by notice Power to require maintenance or closing of private source of public drinking water supply in writing require the owner or any person having the control of any source of public water-supply which is used for drinking purposes —

(a) to keep the same in good order and to clear it from time to time of silt, refuse and decaying vegetation, or

(b) to protect the same from contamination in such manner as the 'Board * may direct or

(c) if the water therein is proved to the satisfaction of the "Board * to be unfit for drinking purposes to take such measures as

In Burma and in ex-

I Order of 1937 I

of 1925

may be specified in the notice to prevent the public from having access to or using such water

Provided that, in the case of a well, such person as aforesaid may, instead of complying with the notice, signify in writing his desire to be relieved of all responsibility for the proper maintenance of the well and his readiness to place it under the control and supervision of the "Board" * for the use of the public, and if he does so, he shall not be bound to carry out the requisition, and the "Board" * shall undertake the control and supervision of the well

Notes—According to s 64 of the English Public Health Act, 1875, all public tanks, bodies

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vision of the well

220 (1) The "Board" * may permit the owner, lessee or occupier of any building or land to connect the building or land with a source of public water-supply by means of communication pipes of such size and description as it may prescribe for the purpose of obtaining water for domestic use

(2) The occupier of every building so connected with the water-supply shall be entitled to have for domestic use, in return for the water-tax, if any, such quantity of water as the "Board" * may determine

(3) All water supplied in excess of the quantity to which such supply is limited under sub-section (2) and, in a cantonment in which a water-tax is not imposed, all water supplied under this section, shall be paid for at such rate as the "Board" * may fix

(4) The supply of water for domestic use shall not be deemed to include any supply—

(a) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire,

(b) for any trade, manufacture or business,

(c) for fountains, swimming baths or any ornamental or mechanical purpose,

(d) for gardens or for purposes of irrigation,

(e) for making or watering roads or paths, or

(f) for building purposes

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221 If it appears to the "Board" * that any building or land in the cantonment is without a proper supply of pure water, the "Board" * may, by notice in writing require the owner, lessee or occupier of the building or land to obtain from a source of public water-

Power to require water supply to be taken

* The word "Board" has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words "Cantonment Authority"

as is adequate to the requirements of or employed upon the building or land, pipes of the prescribed size and description, and to take all necessary steps for the above purposes

Notes —This section corresponds to section 62 of the English Public Health Act 1875 see also *Cambridge v. Fawcett London Water Works Co*, 26 L T (N S) 475, *Gale v. Rhymney*, 67 J P 430

222 (1) The "Board" from any Supply of water under agreement, the owner, or land in the cantonment with any water for any purpose, other than a domestic purpose, on such terms and conditions, consistent with this Act and the rules and bye-laws made thereunder, as may be agreed upon between the "Board" and such owner, lessee or occupier.

(2) The "Board" may curtail the quantity thereof at any time to do so for the purpose of maintaining domestic use by inhabitants of the cantonment

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a supply
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223 Notwithstanding any obligation imposed on "Boards" under this Act a "Board" shall not be liable to any forfeiture, penalty or damages for failure to supply water or for curtailing the quantity thereof if the failure or curtailment, as the case may be, arises from accident or from draught or other unavoidable cause unless, in the case of an agreement for the supply of water under section 222, the "Board" has made express provision for forfeiture, penalty or damages in the event of such failure or curtailment

Notes —Under this Act the decisions in (1908) 1 K B 917, 11 App Cas 511 (1908) 1 Ch 388 have been made obsolete

224 Notwithstanding anything hereinbefore contained or contained in any agreement under section 222, the supply of water by a "Board" to any building or land shall be, and shall be deemed to have been, granted subject to the following conditions namely —

(a) the owner, lessee or occupier of any building or land in or on which water supplied by the "Board" is wasted by reason of the pipes, drains or other works being out of repair shall, if he has knowledge thereof, give notice of the same to such officer as the "Board" may appoint in this behalf,

(b) the Executive Officer or any other officer or servant of the "Board" authorised by it in writing in this behalf may enter into or on any premises supplied with water by the "Board" for the purpose of examining all pipes, taps, works and fittings connected with the

* The word "Board" or Boards has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words "Cantonment Authority" for the word "Board" and "Cantonment Authorities" for the word "Boards"

supply of water and of ascertaining whether there is any waste or misuse of such water,

(c) the 'Board'* may, after giving notice in writing, cut off the connection between any source of public water-supply and any building or land to which water is supplied for any purpose therefrom, or turn off such supply if—

(i) the owner or occupier of the building or land neglects to pay the water-tax or other charges connected with the water-supply within one month from the date on which such tax or charge falls due for payment,

(ii) the occupier refuses to admit the Executive Officer or other authorised officer or servant of the "Board"* into the building or land for the purpose of making any examination or inquiry authorised by clause (b) or prevents the making of such examination or inquiry,

(iii) the occupier wilfully or negligently misuses or causes waste of water,

(iv) the occupier wilfully or negligently injures or damages his meter or any pipe or tap conveying water from the water works,

(v) any pipes, taps, works or fittings connected with the supply of water to the building or land are found, on examination by the Executive Officer, to be out of repair to such an extent as to cause a waste of water,

(d) the expense of cutting off the connection or of turning off the water in any case referred to in clause (c) shall be paid by the owner or occupier of the building or land,

(e) no action taken under or in pursuance of clause (c) shall relieve any person from any penalty or liability which he may otherwise have incurred

Clause (a) —*Vide* *Piercy v Pope* 30 W R 60 *Evans v Gornall* 8 T L R 602
Cambridge University v Hancock 74 J P 477

(c) ... the Board) may cut off the connection where the water tax or other charges connected
v *Wilkinson* 4 C P D 400, *Sheffield*

225. A Board* may allow any person not residing within the limits of the cantonment to take or be supplied with water for any purpose from any source of public water-supply on such terms as it may prescribe, and may at any time withdraw or curtail such supply

Notes —By this section the Board is expressly given power to supply water outside the cantonment limit. As a general rule in the absence of any such power a municipal corporation cannot supply water to parties outside its limits —*Vide* *Dillon* Vol III p 2121

Penalty.

226 Whoever—

(a) uses for other than domestic purposes any water supplied by a 'Board*' for domestic use, or

(b) where water is supplied by agreement with a 'Board*' for a specified purpose, uses that water for any other purpose,

* The word Board has been substituted by Act 21 of 1936. In Burma and in excluded areas read the words 'Cantonment Authority'.

shall be punishable with fine which may extend to fifty rupees, and the 'Board' * shall be entitled to recover from him the price of the water misused.

Water, Drainage and other Connections.

Power of "Board" * to lay wires, connections, etc **227** A "Board" * may carry any cable, wire, pipe, drain, sewer or channel of any kind,—

(a) for the purpose of carrying out, establishing or maintaining any system of water supply, lighting, drainage or sewerage, through, across, under or over any road or street, or any place laid out or intended as a road or street, or, after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated within the cantonment, or

(b) for the purpose of supplying water or of the introduction or distribution of outfall of water or for the removal or outfall of sewage, after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated outside the cantonment, and may at all times do all acts and things which may be necessary or expedient, for repairing or maintaining any such cable, wire, pipe, drain, sewer or channel in an effective state for the purpose for which the same may be used or is intended to be used

Provided that no nuisance shall be caused in excess of what is reasonably necessary for the proper execution of the work

Provided, further, that compensation shall be payable to the owner or occupier for any damage sustained by him which is directly occasioned by the carrying out of any such operation

Notes—As regards
of *Glasgow v Glas*
under ground pipe
vide *Chapman v I*
Water Works 25 J
also (1913) 3 K B
Jur 146 N, R v

228 In the event of any cable, wire, pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over or up the side of any building, such cable, wire, pipe, drain, sewer or channel shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and compensation shall be payable by the "Board" * in respect of any substantial interference with the right to any such enjoyment

229 No person shall, for any purpose whatsoever, without the permission of the "Board" * at any time make or cause to be made any connection or communication with any cable, wire, pipe, drain, sewer or channel constructed or maintained by, or vested in, a "Board" *

* The word "Board" has been substituted by Act 21 of 1926 In Burma and in ded areas read the words "Cantonment Authority".

230 A "Board"* may prescribe the size of the ferrules to be used for the supply of gas, if any, and may establish meters or other appliances for the purpose of testing the quantity of any water, or the quantity or quality of any gas, supplied to any premises by the "Board" *
Power to prescribe ferrules and to establish meters, etc

231 The ferrules, communication pipes, connections, meters, stand-pipes and all fittings thereon or connected therewith leading from water mains or from pipes, drains, sewers or channels into any house or land, to which water or gas is supplied by a "Board,"* and the pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be "installed or",† subject to the inspection and to the satisfaction of the "Board" *
Power of inspection

232. A "Board"* may fix the charges to be made for the establishment by them or through their agency of communications from, and connections with, mains, or pipes for the supply of water, or gas, or for meters or other appliances for testing the quantity or quality thereof supplied, and may levy such charges accordingly
Power to fix rates and charges

Notes—The Act of the Cantonment Committee in enforcing charges in excess of the sanctioned rates is *ultra vires* 20 S L R 325=A I R 1926 Sind 130

Application of this Chapter to Government Water-Supplies

233. (1) Where in any cantonment there is a water-supply under the control of the 'Military Engineer'† Services or the Public Works Department, the Officer of the Military Engineer† Services or of the Public Works Department, as the case may be, in charge of such water-supply (hereinafter in "this Chapter" § referred to as the Officer) may publish in the cantonment in such manner as he thinks fit a notice declaring that any lake, stream, spring, well, tank, reservoir or other source, whether, within or without the limits of the cantonment (other than a source of a public water-supply under the control of the "Board"*) is a source of public water-supply and may, for the purpose of keeping any such source in good order or of protecting it from contamination or from use, require the "Board" * to exercise any power conferred upon that Authority by section 219
Government Water supply

(2) In the case of any water-supply such as is referred to in sub-section (1), the following provisions of this Chapter, namely, the provisions 232 to 237

232

to

be construed as references to such person as may be authorised in this behalf by the officer

234 In any case in which the provisions of section 233 apply [and in which the Board is not receiving a bulk supply of water under section 234A]* the Recovery of charges water-tax, if any, imposed in the cantonment and all other charges arising from the supply of water to the Board shall be recovered by the Board, or such proportion thereof as the Board may determine, shall be paid by the Board to the officer

§[234A (1) Where in any cantonment there is a water supply such as is referred to in sub-section (1) of section 233 the Board may receive from the Government water supply to the Board Military Engineer Services or the Public Works Department, as the case may be, at such point or points as may be agreed upon between the Board and the officer, a supply of water adequate to the requirements for domestic use of all persons in the cantonment other than entitled consumers

(2) Any supply of water received under sub-section (1) shall be a bulk supply, and the Board shall make such payments to the Officer for all water so received as may be agreed upon between the Board and the Officer, or, in default of such agreement, as may be determined by the Central Government to be reasonable having regard to the actual cost of supplying the water in the cantonment and the rate charged for water in any adjacent municipality

Provided that, notwithstanding anything contained in this Act, the Board shall not charge for the supply to persons in the cantonment of water received by the Board under this section a rate calculated to produce more than the sum of the payments made to the officer for water received and the actual cost of the supply thereof by the Board to consumers

(3) If any dispute arises between the Board and the Officer regarding the amount of water adequate to the requirements of persons in the cantonment other than entitled consumers, the dispute shall be referred to the Central Government whose decision shall be final

§[234B Where under

Functions of the Board in relation to distribution of bulk supply

persons in the cantonment other than entitled consumers, and the provisions of this Act shall apply as if such bulk supply were a source of public water supply under the control of the Board and as if the communications from and connections with such bulk supply for the

* In British India the words within brackets have been inserted by Act 24 of 1936 In

In Burma and in excluded

substituted by G. I. Order of 1937

by Act 24 of 1936 In

Burma and in excluded areas these two sections are not in force

purpose of supplying water to such persons were a system of water-supply established and maintained by the Board]

CHAPTER XIV.

REMOVAL AND EXCLUSION FROM CANTONMENTS AND SUPPRESSION OF SEXUAL IMMORALITY

235 The "Officer Commanding the station"* may, on receiving information that any building in the cantonment is used as a brothel or for purposes of prostitution, by order in writing setting forth the substance of the information received, summon the owner, lessee, tenant or occupier of the building to appear before him either in person or by an authorised agent, and, if "the Officer Commanding the station"† is then satisfied as to the truth of the information, he may, by order in writing, direct the owner, lessee, tenant or occupier, as the case may be, to discontinue such use of the building within such period as may be specified in the order

Notes—A house where men meet for immoral purpose is a brothel *R v Rice and Wilson* 10 Cox C C 155 But a house belonging to a woman where she meets men is not a brothel *Singleton v Ellison* 2 Ld Raym 1197

236 (1) Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality shall be punishable with imprisonment which may extend to one month, or with fine which may extend to two hundred rupees

(2) No prosecution for an offence under this section shall be instituted except on the complaint of the person importuned, or of a military officer in whose presence the offence was committed, or of a member of the Military or Air Force Police, being employed in the cantonment and authorised in this behalf by the Officer Commanding the station,* in whose presence the offence was committed, or of a police officer not below the rank of a sub-inspector 'or a sergeant'† who is employed in this behalf by the "Officer Commanding the station" with the concurrence of the District

Notes—There is nothing in the wording of section 236 (1) which requires that the

in order to get conviction prosecution should be started in accordance with s 236 (2)
A I R 1933 Lah 590 = 1933 Cr C 845 see also A I R 1936 All 129

237. If the "Officer Commanding the station"* is, after such inquiry as he thinks necessary, satisfied that any person residing in or frequenting the cantonment is a prostitute or has been convicted of an offence under section 236, or of the abetment of such

* The words within quotations have been substituted by Act 7 of 1925.

† Added by Act 7 of 1931.

an offence, he may cause to be served on such person an order in writing requiring such person to remove from the cantonment within such time as may be specified in the order, and prohibiting such person from re-entering it without the permission in writing of the 'Officer Commanding the station' *

Notes.—This provision is necessary for the good health and morality of the soldiers

Removal and exclusion from cantonments of disorderly persons

238 (1) A Magistrate of the first class, having jurisdiction in a cantonment on receiving information that any person residing in or frequenting the cantonment—

(a) is a disorderly person who has been convicted more than once of gaming or who keeps or frequents a common gaming house, a disorderly drinking shop or a disorderly house of any other description, or

(b) has been convicted, more than once either within the cantonment or elsewhere, of an offence punishable under Chapter XVII of the Indian Penal Code, † or

(c) has been convicted, either within the cantonment or elsewhere, of any offence punishable under section 156 of the Army Act, ‡ or

(d) has been ordered under Chapter VIII of the Code of Criminal Procedure, 1898, § either within the cantonment or elsewhere, to execute a bond for his good behaviour, may record in writing the substance of the information received, and may issue a summons to such person requiring such person to appear and show cause why he should not be required to remove from the cantonment and be prohibited from re-entering it

(2) Every summons issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the summons on the person against whom the summons is issued

(3) The Magistrate shall, when the person so summoned appears before him, proceed to inquire into the truth of the information received and take such further evidence as he thinks fit, and if, upon such inquiry, it appears to him that such person is a person of any kind described in sub-section (1) and that it is necessary for the maintenance of good order that such person should be required to remove from re-entering the cantonment, the

Magistrate shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the Officer Commanding the station *

239 (1) If any person in a cantonment causes or attempts to cause or does any act which he knows is likely to cause disloyalty disaffection or breaches of discipline amongst any portion

Removal and exclusion from cantonment of seditious persons

* Substituted by Act 7 of 1935

† N.L.A. of 1860
§ V of 1898

‡ 44 & 45 Vict. c. 58

of His Majesty's forces or is a person who, the "Officer Commanding the station"* has reason to believe, is likely to do any such act, the "Officer Commanding the station"* may make an order in writing setting forth the reasons for the making of the same and requiring such person to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the "Officer Commanding the station" *.

Provided that no order shall be made under this section against any person unless he has had a reasonable opportunity of being informed of the grounds on which it is proposed to make the order and of showing cause why the order should not be made.

(2) Every order made under sub-section (1) shall be sent to the Superintendent of Police of the district, who shall cause a copy thereof to be served on the person concerned.

(3) Upon the making of any order under sub-section (1), the "Officer Commanding the station"* shall forthwith send a copy of the same to the "Central Government" †.

(4) The "Central Government" † may, of its own motion, and shall, on application made to it in this behalf within one month of the date of the order by the person against whom the order has been made, call upon the District Magistrate to make, after such inquiry as the "Central Government" † may prescribe, a report regarding the justice of the order and the necessity therefor. At every such inquiry the person against whom the order has been made shall be given an opportunity of being heard in his own defence.

(5) The "Central Government" † may, at any time after the receipt of a copy of an order sent under sub-section (3) or, where a report has been called for under sub-section (4), on receipt of that report, if it is of opinion that the order should be varied or rescinded, [make such order thereon as it thinks fit] ‡.

(6) Any person who has been excluded from a cantonment by an order made under this section may, at any time after the expiry of one month from the date thereof, apply to the Officer Commanding-in-Chief, the Command, for the rescission of the same and, on such application being made, the said Officer may, after making such inquiry, if any, as he thinks necessary, either reject the application or rescind the order.

Penalty

240 Whoever—

(a) fails to comply with an order issued under this Chapter within the period specified therein, or, whilst an order prohibiting him from re-entering a cantonment without permission is in force, re enters the cantonment without such permission, or

(b) knowing that any person has, under this Chapter, been required to remove from the cantonment and has not obtained the requisite permission to re enter it, harbours or conceals such person in the cantonment,

Order

Order
as to

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence

Notes—The offence of keeping a brothel is a continuing offence *Only v Geo*, 25 J P 312, *Ex parte Burnbj*, (1901) 2 K B 458

CHAPTER XV

POWERS, PROCEDURE, PENALTIES AND APPEALS

Entry and Inspection

241 It shall be lawful for the President or the Vice-President of a Board, or the Executive Officer, or the Health Officer or Assistant Health Officer,

Powers of entry

or any person specially authorised by the Health Officer or the Assistant Health Officer, or for any other person authorised by general or special order of a 'Board' * in this behalf, to enter into or upon any building or land with or without assistants or workmen in order to make any inquiry, inspection, measurement, valuation or survey, or to execute any work, which is authorised by or under this Act or which it is necessary to make or execute for any of the purposes or in pursuance of any of the provisions of this Act or of any rule, bye-law or order made thereunder

Provided that nothing in this section shall be deemed to confer upon any person any power such as is referred to in section 207 or section 215 or to authorise the conferment upon any person of any such power

242 With the previous sanction of the President, any member of a Board may inspect any work or institution constructed or maintained, in whole or part, at the expense of the Board and

Powers of inspection by member of a Board

any register, book, accounts or other document belonging to, or in the possession of, the Board

Notes—A rate payer has no right to inspect the accounts *Williams v Manchester Corporation* 13 T L R 299

243 (1) A 'Board' * may, by general or special order, authorise any person—

Power of inspection, etc

(a) to inspect any drain, privy, latrine, urinal, cesspool, pipe, sewer or channel in or on any building or land in the cantonment, and, in his discretion, to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, privy, latrine, urinal, cesspool, pipe sewer or channel, as the case may be,

(b) to examine works under construction in the cantonment, to take levels or to remove, test, examine replace or read any meter

(2) If, on such inspection, the opening of the ground is found to be necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building but if it is found that no nuisance exists or but for such

* The word 'Board' has been substituted by Act 21 of 1936. In Burma and in excluded areas read the words 'Cantonment Authority'

opening would have arisen, the ground or portion of any building, drain or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated, or made good, as the case may be, by the 'Board.'*

244 (1) The Executive Officer of a cantonment may, with or

Power to enter land adjoining
land where work is in progress

without assistants or workmen, enter on any land within fifty yards of any work authorised by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on of the same

(2) The Executive Officer shall, before entering on any land under sub-section (1), give the occupier, or, if there is no occupier, the owner not less than three days' previous notice in writing of his intention to make such entry and shall state the purpose thereof, and shall, if so required by the occupier or owner, fence off so much of the land as may be required for such purpose

(3) The Executive Officer shall, in exercising any power conferred by this section, do as little damage as may be, and compensation shall be payable by the 'Board'* to the owner or occupier of such land, or to both, for any such damage whether permanent or temporary.

245 It shall be lawful for any person, authorised by or under this

Breaking into premises

Act to make any entry into any place, to open or cause to be opened any door, gate

or other barrier—

(a) if he considers the opening thereof necessary for the purpose of such entry ; and

(b) if the owner or occupier is absent or being present refuses to open such door, gate or barrier

Entry to be made in the day
time

246 Save as otherwise expressly provided in this Act, no entry authorised by or under this Act shall be made

except between the hours of sunrise and sunset

247. *Save as otherwise expressly provided in this Act, no building*

Owner's consent ordinarily to be
obtained,

or land shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof, and no such

entry shall be made without giving the said occupier or owner, as the case may be, not less than four hours' written notice of the intention to make such entry

Provided that no such notice shall be necessary if the place to be inspected is a stable for horses or a shed for cattle, or a latrine, privy or urinal, or a work under construction

Notes.—The entries

quires 4 hours' written notice
Where entry is made on the
153 Ind Cas 469=36 Cr

* The word "Board" has been substituted by Act 24 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'.

248 When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious customs and usages of the occupants of the place entered, and no apartment in the actual occupancy of a female shall be entered or broken open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing

249 Whoever obstructs or molests any person employed by a "Board,"* who is not a public servant within the meaning of section 21 of the Indian Penal Code† or any person with whom the "Board" has lawfully contracted, in the execution of his duty or of anything which he is empowered or required to do by virtue or in consequence of any of the provisions of this Act or of any rule, bye-law or order made thereunder, or in fulfilment of his contract as the case may be, shall be punishable with fine which may extend to one hundred rupees

Notes—Refusal to pay rent is not obstruction A I R 1932 All 386=138 Ind Cas 282

Powers and Duties of Police Officers

250 Any member of the police force employed in a cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV

Provided that—

(a) in the case of the breach of any such provision as is specified in Part B of Schedule IV, no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained, and

(b) no person shall be so arrested for an offence under section 236 except—

(i) at the request of the person importuned or of a military officer in whose presence the offence was committed, or

(ii) by or at the request of a member of the Military or Air Force Police, who is employed in the cantonment and authorised in this behalf by the 'Officer Commanding the station' ‡ and in whose presence the offence was committed or by or at the request of any police officer not below the rank of a sub-inspector who is employed in the cantonment and authorised in this behalf by the 'Officer Commanding the station' ‡

251 It shall be the duty of all police officers to give immediate information to the "Board"* of the commission of any offence against the provisions

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'

† XLV of 1860

‡ Substituted by Act 7 of 1925

of this Act or of any rule or bye-law made thereunder, and to assist all cantonment officers and servants in the exercise of their lawful authority

Notices

252 Where any notice order or requisition made under this Act or any rule or bye law made thereunder requires anything to be done for the doing of which no time is fixed in this Act or in the rule or bye law, the notice, order or requisition shall specify a reasonable time for doing the same

253 Every notice order or requisition issued by a 'Board * under this Act or any rule or bye-law made thereunder shall be signed—

(a) † either by the President of the Board or by the Executive Officer, or†

(b) by the members of any committee especially authorised by the "Board * in this behalf

Notes—As regards the validity of printed signatures see *Bridges v Dix* 7 T L R 215 see also *Osgood v Nelson* L R 5 H L 636 *Blades v Lawrence* L R 9 Q B 374 The notice must be signed by the officer authorised to sign it 8 F R 1886 Cr No conviction is maintainable on a defective notice 36 A 185 36 A 227 In such a case a fresh notice should be issued 1 C L J 51

254 (1) Every notice, order or requisition issued under this Act or any rule or bye-law made thereunder shall, save as otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice order or requisition, or sending it by post, to the person for whom it is intended, or

(b) if such person cannot be found by affixing the notice, order or requisition on some conspicuous part of his last known place of abode or business, if within the cantonment, or by giving or tendering the notice order or requisition to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the building or land if any, to which it relates

(2) When any such notice, order or requisition is required or permitted to be served upon an owner, lessee or occupier of any building or land, it shall not be necessary to name the owner, lessee or occupier therein and the service thereof shall save as otherwise expressly provided, be effected either—

(a) by giving or tendering the notice, order or requisition, or sending it by post, to the owner, lessee or occupier, or if there are more owners, lessees or occupiers than one, on any one of them, or

* The word Board has been substituted by Act of 21 of 1936 In Burma and in excluded areas read the words Cantonment Authority .

words where there is a Board
excluded areas insert at the

Executive Officer or have been omitted by Act 21 of 1936 In Burma and in excluded areas after or insert the words where there is no Board by the Executive Officer, or

(b) if no such owner, lessee or occupier can be found, by giving or tendering the notice, order or requisition to the authorised agent, if any, of any such owner, lessee or occupier or to an adult male member or servant of the family of any such owner, lessee or occupier, or by causing it to be affixed on some conspicuous part of the building or land to which it relates

(3) When the person on whom a notice, order or requisition is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor

Notes—The mode of serving the notice should be strictly followed 9 W R 562 12 C L J 4, 35 C 191 but see 22 M 187, 26 B 669

255 Every notice which, by or under this Act, is to be given or served as a public notice or as a notice Method of giving notice which is not required to be given to any individual therein specified shall, save as otherwise expressly provided, be deemed to have been sufficiently given or served if a copy thereof is affixed in such conspicuous part of the office of the 'Board,* or in such other public place during such period or is published in such local newspaper or in such other manner, as the 'Board * may direct

256 In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act it shall Powers of Board * in case of non compliance with notice etc be lawful for the 'Board * whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the 'Board **

Recovery of Money

257 (1) If any such notice as is referred to in section 256 has been given to any person in respect of property of which he is the owner, the Liability of occupier to pay in default of owner Board * may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 256

Provided that if the occupier, 'Board *, refuses truly to disclose or address of the person to whom recover from the occupier the whole amount recoverable under section 256

(2) Any amount recovered from an occupier instead of from an owner under subsection (1) shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been paid to the owner

* The word Board has been substituted by Act 24 of 1936 But in Burma and in excluded areas for the word Board read the words 'Cantonment Authority'.

Notes —The occupier is liable only to the extent of the rent payable by him and he may deduct any sum paid by or recovered from him from the rent due from him to the owner. Agents and trustees who fall within the definition of owner are only liable to the extent of the funds in their hands —*Ajanger s Municipal Corporation*, p 439

258 (1) Where any person, by reason of his receiving the rent of immovable property as an agent or trustee, or of his being as an agent or trustee the person who would receive the rent if the property were let to a tenant, would under this Act be bound to discharge any obligation imposed on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the owner sufficient for the purpose

(2) The burden of proving any fact entitling an agent or trustee to relief under sub-section (1) shall lie upon him.

(3) Where any agent or trustee has claimed and established his right to relief under this section, the 'Board' * may, by notice in writing, require him to apply to the discharge of such obligation as aforesaid the first monies which may come to his hands on behalf, or for the use, of the owner, and, on failure to comply with the notice, he shall be deemed to be personally liable to discharge the obligation

Notes —*Ido* notes under s 257

†[**259** (1) Notwithstanding anything elsewhere contained in this Act, arrears of any tax and any other money recoverable by a Board under this Act may be recovered together with the cost of recovery either by suit or, on application to a Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax or money is recoverable may for the time being be residing, by the distress and sale of any moveable property of, or standing timber, growing crops or grass belonging to such person which is within the limits of such Magistrate's jurisdiction, and shall if payable by the owner of any property as such, be a charge on the property until paid

Provided that the tools of artisans shall be exempt from such distress or sale

(2) An application to a Magistrate under sub-section (1) shall be in writing and shall be signed by the President or Vice President of the Board or by the Executive Officer, but shall not require to be personally presented.]

Notes — 'The amendment follows section 81 of the Punjab Municipal Act 1911, to overcome the difficulty experienced in recovering dues from persons who have left the cantonment —*Notes on Clauses to Act 24 of 1936* It was held under the old section that where Cantonment Authority recovered arrears of rent from tenants by distress and sale of moveable property its action was illegal and it was liable to pay damages A I R 1933 Lah 517 Under the new section such recovery is no longer illegal

* The word 'Board' has been substituted by Act 24 of 1936 In Burma and in exclud

Committees of Arbitration

260 In the event of any disagreement as to the liability of a 'Board * to pay any compensation under this Act or as to the amount of any compensation so payable the person claiming such compensation may apply to the 'Board * for the reference of the matter to a Committee of Arbitration, and the 'Board * shall forthwith proceed to convene a Committee of Arbitration to determine the matter in dispute

Notes—The death of a party revokes the arbitration *Rhodes v Haigh* (1823) 1 B & C 315

261 When a Committee of Arbitration is to be convened, the 'Board * shall cause a public notice to be published stating the matter to be determined, and shall forthwith send copies of the order to the District Magistrate, and to the other party concerned and shall as soon as may be, nominate such members of the Committee as it is entitled to nominate under section 262, and by notice in writing call upon the other persons who are entitled to nominate a member or members of the Committee to nominate such member or members in accordance with the provisions of that section

Constitution of Committee of Arbitration

262 (1) Every Committee of Arbitration shall consist of five members, namely—

(a) a Chairman who shall be a person not in the service of the 'Crown † or the 'Board, * and who shall be nominated by the 'Officer Commanding the station ‡

(b) two persons nominated by the 'Board, * and

(c) two persons nominated by the other party concerned §

(2) If the 'Board * or the other party concerned or the 'Officer Commanding the station † fails within seven days of the date of issue of the notice referred to in section 261 to make any nomination which it or he is entitled to make or, if any member who has been so nominated neglects or refuses to act and the 'Board * or other person by whom such member was nominated fails to nominate another member in his place within seven days from the date on which it or he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members as the case may be to fill the vacancy or vacancies

Notes—This section corresponds to section 8 in the Indian Arbitration Act

* The word Board has been substituted by Act 24 of 1930 In Burma and in Government

† In clause (c) of subsection (2) of section 26 after the words "other party concerned" omit the words "who shall be persons liable to pay taxes in the cantonment and ordinarily resident therein or in the immediate vicinity thereof" But in Burma these words have been retained

Notes—The occupier is liable only to the extent of the rent payable by him and he may deduct any sum paid by or recovered from him from the rent due from him to the owner. Agents and trustees who fall within the definition of owner are only liable to the extent of the funds in their hands.—*Aiyanger v Municipal Corporation*, p 439

258 (1) Where any person, by reason of his receiving the rent of immovable property as an agent or trustee, or of his being as an agent or trustee the person who would receive the rent if the property were let to a tenant, would under this Act be bound to discharge any obligation imposed on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the owner sufficient for the purpose

(2) The burden of proving any fact entitling an agent or trustee to relief under sub-section (1) shall lie upon him.

(3) Where any agent or trustee has claimed and established his right to relief under this section, the 'Board' * may, by notice in writing, require him to apply to the discharge of such obligation as aforesaid the first monies which may come to his hands on behalf, or for the use, of the owner, and, on failure to comply with the notice, he shall be deemed to be personally liable to discharge the obligation

Notes—*See notes under s 257*

†[**259** (1) Notwithstanding anything elsewhere contained in this Act, arrears of any tax and any other money recoverable by a Board under this Act may be recovered together with the cost of recovery either by suit or, on application to a Magistrate having jurisdiction in the cantonment or in any place where the person from whom such tax or money is recoverable may for the time being be residing, by the distress and sale of any moveable property of, or standing timber, growing crops or grass belonging to such person which is within the limits of such Magistrate's jurisdiction, and shall if payable by the owner of any property as such, be a charge on the property until paid

Provided that the tools of artisans shall be exempt from such distress or sale

(2) An application to a Magistrate under sub-section (1) shall be in writing and shall be signed by the President or Vice President of the Board or by the Executive Officer, but shall not require to be personally presented.]

Notes—The amendment follows section 81 of the Punjab Municipal Act 1911, to overcome the difficulty experienced in recovering dues from persons who have left the cantonment.—*Notes on Clauses to Act 21 of 1936* It was held under the old section that where Cantonment Authority recovered arrears of rent from tenants by distress and sale of moveable property its action was illegal and it was liable to pay damages A I R 1933 Lah 517 Under the new section such recovery is no longer illegal

* The word 'Board' has been substituted by Act 24 of 1936 In Burma and in exclud

Committees of Arbitration

260 In the event of any disagreement as to the liability of a
 Applicant on for a Committee of Arbitration 'Board * to pay any compensation under
 this Act or as to the amount of any com-
 such compensation may apply to the Board * for the reference of the
 matter to a Committee of Arbitration and the Board* shall forthwith
 proceed to convene a Committee of Arbitration to determine the
 matter in dispute

Notes—The death of a party revokes the arbitration *Rhodes v Haigh* (1823) 1 B
 & C 315

261 When a Committee of Arbitration is to be convened the
 Procedure for convening Com 'Board * shall cause a public notice to be
 mittee of Arbitrat on published stating the matter to be deter-
 mined, and shall forthwith send copies
 of the order to the District Magistrate, and to the other party con-
 cerned and shall as soon as may be, nominate such members of the
 Committee as it is entitled to nominate under section 262, and by
 notice in writing call upon the other persons who are entitled to
 nominate a member or members of the Committee to nominate such
 member or members in accordance with the provisions of that section

262 (1) Every Committee of Arbi-
 Const tut ion of Committee of tration shall consist of five members,
 Arb tration namely —

(a) a *Chairman* who shall be a person not in the service of the
 'Crown † or the Board * and who shall be nominated by the
 'Officer Commanding the station †

(b) two persons nominated by the "Board , * and

(c) two persons nominated by the other party concerned §

(2) If the Board * or the other party concerned or the Officer
 Commanding the station' † fails within seven days of the date of issue
 of the notice referred to in section 261 to make any nomination which
 it or he is entitled to make or, if any member who has been so nomi-
 nated neglects or refuses to act and the Board * or other person by
 whom such member was nominated fails to nominate another member
 in his place within seven days from the date on which it or he may be
 called upon to do so by the District Magistrate, the District Magis-
 trate shall forthwith appoint a member or members as the case may
 be to fill the vacancy or vacancies

Notes—This section corresponds to section 8 in the Indian Arbitration Act

* The word Board has been substituted by Act 24 of 1930 In Burma and in

‡ after the word concerned omit
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263. (1) No person who has a direct interest in the matter under reference, or whose services are not immediately available for the purposes of the Committee, shall be nominated a member of a Committee of Arbitration.

No person to be nominated who has direct interest or whose services are not immediately available.

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is otherwise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the "Board" * or other person by whom any such person was nominated fails to nominate another member within seven days from the date on which it or he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 262.

Notes.—Ordinance on arbitration was promulgated for the first time in 1914.

..

264. (1) When a Committee of Arbitration has been duly constituted, the "Board"* shall, by notice in writing, inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

Meetings and powers of Committees of Arbitration.

(2) The Chairman of the Committee shall fix the time and place of meetings, and shall have power to adjourn any meeting from time to time as may be necessary.

(3) The Committee shall receive and record evidence, and shall have power to administer oaths to witnesses, and, on requisition in writing signed by the Chairman of the Committee, the District Magistrate shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

Notes.—In an arbitration under a submission the Court cannot issue commission to examine witnesses. *In re Shaw*, (1892) 1 Q. B. 91, 47 B. 250=25 Bom. L. R. 853. The examination of witnesses by arbitrators must not be *ex-parte*. 34 C. L. J. 39=27 C. W. N. 933.

265. (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the Chairman and at least three of the other members are present.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail.

(3) The decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

Notes.—The decision of a Committee of Arbitration stands on the footing of a decree. 5 Ind. Cas. 374=7 M. L. T. 355. As regards finality of awards, vide 14 Bur. L. R. 129=4 L. B. R. 219; 18 Ind. Cas. 978=40 C. 219=17 C. W. N. 995.

* The word "Board" has been substituted by Act 21 of 1936. In Burma and in excluded areas read the words "Cantonment Authority."

Prosecutions

[266 (1) Save as otherwise expressly provided in this Act, no Court shall proceed to the trial of any offence made punishable by or under this Act, other than an offence specified in Schedule IV, except on the complaint of, or upon information received from, the "Board" * concerned or a person authorised by the "Board" * by a general or special order in this behalf

[(2) No offence made punishable under this Act shall be tried by any Magistrate or by any Bench, if such Magistrate or any of the Magistrates composing the Bench is a member of the Board] †

Notes —If a complaint is not instituted by the proper officer there can be no conviction. C 448 1 C L J 51 Rat Un Cr r 20 P R 1894 Cr 10 P R 1884 All 905 2 L B R 124 11 A L J r R 305 but see 87 C 585

267 (1) A 'Board, * or any person authorised by it, by general or special order in this behalf, may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act other than an offence under Chapter XIV

Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order or requisition issued by or on behalf of the 'Board, * unless and until the same has been complied with in so far as compliance is possible

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded

General Penalty Provisions

268 Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees, and in the case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention

Notes —A prosecution is not maintainable for non payment of moneys due by a contractor 22 B 709 see also 5 Ind Cas 638=9 P W R 1909 Cr This section should be strictly construed Vide 2 A L J 26=A W N 1905 19=2 Cr L J. 19

269 Where any person to whom a licence has been granted under this Act or any agent or servant of such person commits a breach of any of the conditions thereof, or of any bye-law made under this act for the purpose of regulating the manner or

* The word Board has been substituted by Act 24 of 1936 In Burma and in excluded areas read 'Cantonment Authority'

† In British India section 266 has been re numbered as sub section (1) of that section and sub section (2) has been added by Act 24 of 1936 But in Burma and in excluded areas read sub section (1) of section 266 as section 266 and omit sub-section (2)

263 (1) No person who has a direct interest in the matter under reference, or whose services are not immediately available for the purposes of the Committee, shall be nominated a member of a Committee of Arbitration

No person to be nominated who has direct interest or whose services are not immediately available

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference or is otherwise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the "Board" * or other person by whom any such person was nominated fails to nominate another member within seven days from the date on which it or he may be called upon to do so by the District Magistrate such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 262

Notes—Ordinarily an arbitration can be annulled for corruption or partiality hence it is desirable that persons appointed arbitrators should have no direct interest *vide Tullis v Jackson* (1892) 8 Ch 441 *In re Whitely* (1891) 1 Ch 558 *Tutenson v Peat* 3 Atk 529 *Morgan v Mather*, 2 Ves Jr 15

264 (1) When a Committee of Arbitration has been duly constituted, the 'Board' * shall, by notice in writing, inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter

Meetings and powers of Committees of Arbitration

(2) The Chairman of the Committee shall fix the time and place of meetings and shall have power to adjourn any meeting from time to time as may be necessary

(3) The Committee shall receive and record evidence, and shall have power to administer oaths to witnesses, and, on requisition in writing signed by the Chairman of the Committee, the District Magistrate shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself

Notes—In an arbitration under a submission the Court cannot issue commission to examine witnesses *In re Shaw*, (1892) 1 Q B 91 47 B 250=25 Bom L R 853 The examination of witnesses by arbitrators must not be *ex parte* 31 C L J 39=27 C W N 933

265 (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the Chairman and at least three of the other members are present

Decisions of Committees of Arbitration

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail

(3) The decision of a Committee of Arbitration shall be final and shall not be questioned in any Court

Notes—The decision of a Committee of Arbitration stands on the footing of a decree 5 Ind Cas 374=7 M L T 355 As regards finality of awards *vide* 14 Bur L R 129=4 L B P 219 18 Ind Cas 978=40 C 219=17 C W N 395

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words 'Cantonment Authority'

Prosecutions.

[266. (1) Save as otherwise expressly provided in this Act, no Court shall proceed to the trial of any offence made punishable by or under this

Prosecutions.

Act, other than an offence specified in Schedule IV, except on the complaint of, or upon information received from, the "Board"* concerned or a person authorised by the "Board"* by a general or special order in this behalf.

[(2) No offence made punishable under this Act shall be tried by any Magistrate or by any Bench, if such Magistrate or any of the Magistrates composing the Bench is a member of the Board.] †

* The word "Board" has been substituted by Act 24 of 1936. In Burma and in ex-

267. (1) A "Board,"* or any person authorised by it, by general or special order in this behalf, may, either

Composition of offences.

before or after the institution of the proceedings, compound any offence made punishable by or under this Act other than an offence under Chapter XIV :

Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order or requisition issued by or on behalf of the "Board,"* unless and until the same has been complied with in so far as compliance is possible.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

General Penalty Provisions.

268. Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with

General penalty.

any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

Notes.—A prosecution is not maintainable for non-payment of moneys due by a contractor. 22 B. 709 ; see also 5 Ind. Cas. 638=9 P. W. R. 1909 Cr. This section should be strictly construed. Vide 2 A. L. J. 26=A. W. N. 1905. 19=2 Cr. L. J. 19.

269. Where any person to whom a licence has been granted under this Act or any agent or servant of such person commits a breach of any of the conditions thereof, or of any bye-law

Cancellation and suspension of licences.

made under this act for the purpose of regulating the manner or

* The word "Board" has been substituted by Act 24 of 1936. In Burma and in ex-

of that section
in 1901
)

circumstances in, or the conditions subject to which anything permitted by such licence is to be or may be done, the 'Board' * may, without prejudice to any other penalty which may have been incurred under this Act, by order in writing cancel the licence or suspend it for such period as it thinks fit

Provided that no such order shall be made until an opportunity has been given to the holder of the licence to show cause why it should not be made

Notes—A licence is not contract *Board v State* 46 Ala 329 It can be revoked at any time without liability by the authorities granting it upon a failure to comply with the conditions imposed *Schwartz v City of Chicago* 68 Ill 444 But such withdrawal must be on a just and sufficient cause *Bischoff v State* 48 Fla 63 *City of St Charles v Hackman* 183 Mo 684—cited in *Atjanger s Municipal Corporation* p 225

270 Where any person has incurred a penalty by reason of having caused any damage to the property of a 'Board,'* he shall be liable to make good such damage, and the amount payable in respect of the damage shall in case of dispute be determined by the Magistrate by whom the person incurring such penalty is convicted and, on non payment of such amount on demand the same shall be recovered by distress and sale of the moveable property of such person and the Magistrate shall issue a warrant for its recovery accordingly

Limitation

271 No Court shall try any person for an offence made punishable by or under this Act after the expiry of six months from the date of the commission of the offence unless complaint in respect of the offence has been made to a Magistrate within the six months aforesaid

Notes—A prosecution started after the period of six months is time barred 6 C W N 167, 37 C 545=14 C W N 614=10 C L J 623 A I R 1931 Oudh 29=35 Cr L J 666=11 O W N 156

Suits

272 No suit or prosecution shall be entertained in any Court against any "Board" *† or against any "Officer Commanding the station,"‡ or against any member of a Board, or against any officer or servant of a "Board," * for anything in good faith done, or intended to be done, under this Act or any rule or bye-law made thereunder

Notes—Vide 14 Bom L R 949

273 (1) No suit shall be instituted against any "Board" * or against any member of a Board or against any officer or servant of a "Board,"* in respect

* The word 'Board' has been substituted by Act 21 of 1936 In Burma and in excluded areas read "

† In section 272 a section 10 have be areas after the words under sub section (2)

‡ The words within quotation have been substituted by Act 7 of 1935

of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the office of the "Board,"* and, in the case of such member, officer or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered or left

(2) If the "Board" member officer or servant has, before the suit is instituted tendered sufficient amends to the plaintiff the plaintiff shall not recover any sum in excess of the amount so tendered, and shall also pay all costs incurred by the defendant after such tender.

(3) No suit such as is described in sub-section (1) shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto be instituted after the expiry of six months from the date on which the cause of action arises

(4) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit or proceeding

Notes — All corporations as well as their officers and servants enjoy certain statutory privileges 33 A 510=8 A L J 509 A notice under sub-section (1) must be given before any institution of suits A W N 1901 105 A notice is necessary for anything done under the Act 18 B 19 1 A 269 21 C 900 The object of the notice is to give time to the Cantonment Authorities or their servants for setting matters right 110 P L R 1911=9 Ind Cas 841 This section does not contemplate suit on private contract A I R 1934 All 436

Appeals and Revision

274 (1) Any person aggrieved by any order described in the second column of Schedule V may appeal to the authority specified in that behalf in the third column thereof

Appeals from executive orders

(2) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fourth column of the said Schedule

(3) The period specified as aforesaid shall be computed in accordance with the provisions of the Indian Limitation Act, 1908† with respect to the computation of periods of limitation thereunder

275 (1) Every appeal under section 274 shall be made by petition in writing accompanied by a copy of the order appealed against

Petition of appeal

(2) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may thereto any report which it may desire to make by way of

* The word Board has been substituted by Act 21 of 1936.
excluded areas read Cantonment Authority

† IX of 1908

276 On the admission of an appeal from an order other than an order contained in a notice issued under clause (a) of section 137, section 140, section 176 or section 238, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal and, if the order is set aside on appeal disobedience thereto shall not be deemed to be an offence

277 (1)* Where an appeal from an order made by the "Board"† has been disposed of by the District Magistrate [either party to the proceedings]‡ may, within thirty days from the date thereof, apply, through the 'Officer Commanding-in-Chief, the Command,' § to the 'Central Government' || or to such authority as the "Central Government" || may appoint in this behalf, for a revision of the decision

(2) *The provisions of the Chapter with respect to appeals shall apply, as far as may be to applications for revision made under this section

Finality of appellate orders **278** Save as otherwise provided in section 277, every order of any appellate authority shall be final

279 No appeal shall be decided under this Chapter unless the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner

CHAPTER XVI

RULES AND BYE LAWS

280 (1) The [Central Government]|| may, after previous publication, make rules to carry out the purposes and objects of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

(a) the manner in which, and the authority to which, application for permission to occupy land belonging to [the Crown]¶ in a cantonment is to be made,

(1) (1) B Order of 1937)

* In British India the word the Crown has been substituted by C I Order of 1937 In Burma read the word Government (1) (1) G B Order of 1937)

(b) the authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission ,

“(bb) the allotment to a “Board”* of a share of the rents and profits accruing from property entrusted to its management under the provisions of section 116A ”†

(c) the appointment, control, supervision, suspension, removal, dismissal and punishment of servants of “Boards” *

[(cc) the constitution of a service of Executive Officers and the appointment, control, supervision, conditions of service, pay and allowances, suspension, removal, dismissal and punishment of the members thereof ,]‡

(d) the circumstances in which security shall be demanded from servants of “Boards”* and the amount and nature of such security ;

(e) the grant of leave, absentee or acting allowance to servants of “Boards” , *

(f) the creation and management of Provident Funds, and the circumstances in which, and the conditions subject to which, contributions thereto shall be made from cantonment funds and by servants of “Boards” , *

(g) the keeping of accounts by “Boards” * and the manner in which such accounts shall be audited and published ,

(h) the definition of the persons by whom, and the manner in which, money may be paid out of a cantonment fund , §

(i) the preparation of estimates of income and expenditure by “Boards” * and the definition of the persons by whom, and the conditions subject to which, such estimates may be sanctioned ,

(j) the regulation of the procedure of Committees of Arbitration , and

(k) the prescribing of registers, statements and forms to be used and maintained by any authority for the purposes of this Act

Notes—A rule is made by the Central Government where a bye law is framed by the Cantonment Authority The Government cannot delegate its rule making power to the Cantonment Authority 17 M 118=4 M L J 38 As to the extension of rules beyond cantonment , vide 2 P R (1885) Cr 12 P, R 1870 Cr Title to land cannot be conferred by condonation 1936 A M L J 44

Supplemental provisions respecting rules

281 (1) A rule under section 280 may be made either generally for all cantonments or for the whole or any part of any one or more cantonments

(2) All rules so made shall be published in the “official Gazette” || and in such other manner, if any, as the “Central Government” ¶ may

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276 On the admission of an appeal from an order, other than an order contained in a notice issued under clause (a) of section 137, section 140, section 176, or section 238, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal and, if the order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

277. (1)* Where an appeal from an order made by the "Board"† has been disposed of by the District Magistrate [either party to the proceedings]‡ may, within thirty days from the date thereof, apply, through the "Officer Commanding-in-Chief, the Command,"§ to the "Central Government,"|| or to such authority as the "Central Government"|| may appoint in this behalf, for a revision of the decision

(2) *The provisions of the Chapter with respect to appeals shall apply, as far as may be, to applications for revision made under this section

278 Save as otherwise provided in section 277, every order of any appellate authority shall be final

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(a) the manner in which, and the authority to which, application for permission to occupy land belonging to [the Crown]¶ in a cantonment is to be made,

ibid

id in

1936.

"

¶ In British India the words "Central Government" have been substituted by G. I. Order of 1937 with the word "Governor".

G. I. Order of 1937.

(16) the matters regarding which conditions may be imposed by licences granted under section 210 ,

(17) the control and supervision of places where dangerous or offensive trades are carried on so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effects arising or likely to arise therefrom ,

(18) the regulation of the erection of any enclosure, fence tent awning or other temporary structure of whatsoever material or nature on any land situated within the cantonment ,

(19) the laying out of streets, and the regulation and prohibition of the erection of buildings without adequate provision being made for the laying out and location of streets ,

(20) the regulation of the use of public parks and gardens and other public places and the protection of avenues, trees, grass and other appurtenances of streets and other public places ,

(21) the regulation of the grazing of animals

(22) the fixing and regulation of the use of public bathing and washing places ,

(23) the regulation of the posting of bills and advertisements, and of the position, size, shape or style of name-boards, sign-boards and sign-posts

(24) the fixation of a method for the sale of articles whether by measure, weight piece or any other method

(25) the rendering necessary of licences within the cantonment—

(a) for persons working as job porters for the conveyance of goods ,

(b) for animals or vehicles let out on hire

(c) for the proprietors or drivers of vehicles boats or other conveyances or of animals kept or playing for hire , or

(d) for persons impelling or carrying such vehicles or other conveyances

(26) the prescribing of the fee payable for any licence required under clause (25) and of the conditions subject to which such licences may be granted, revised suspended or withdrawn

(27) the regulation of the charges to be made for the services of such job porters and of the hire of such animals vehicles or other conveyances and for the remuneration of persons impelling or carrying such vehicles or conveyances as are referred to in clause 25

(28) the regulation or prohibition, for purposes of sanitation or the prevention of disease or the promotion of public safety or convenience of any act which occasions or is likely to occasion a nuisance, and for the regulation or prohibition of which no provision is made elsewhere by or under this Act ,

(29) the circumstances and the manner in which owners of buildings or land in the cantonment who are temporarily absent from, or are not resident in, the cantonment, may be required to appoint as their agents for all or any of the purposes of this Act or of any rule or bye law made thereunder persons residing within or near the cantonment

(30) the prevention of the spread of infectious or contagious diseases within the cantonment ,

(31) the segregation in, or the removal and exclusion from

direct and, on such publication, shall have effect as if enacted in this Act

Notes—Under this Act, publication is made compulsory

282 Subject to the provisions of this Act and of the rules made thereunder, a 'Board * may, in addition to any bye laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters in the cantonment, namely —

(1) the registration of births, deaths and marriages, and the taking of a census ,

(2) the enforcement of compulsory vaccination ,

(3) the regulation of the collection and recovery of taxes, tolls and fees under this Act and the refund of taxes ,

(4) the regulation or prohibition of any description of traffic in the streets ,

(5) the manner in which vehicles standing, driven, led or propelled in the streets between sunset and sunrise shall be lighted ,

(6) the seizure and confiscation of ownerless animals straying within the limits of the cantonment ,

(7) the prevention and extinction of fire ,

(8) the construction of scaffolding for building operations to secure the safety of the general public and of persons working thereon ,

(9) the regulation in any manner not specifically provided for in this Act of the construction, alteration, maintenance, preservation, cleaning and repairs of drains, ventilation-shafts, pipes, water closets, privies, latrines, urinals, cesspools and other drainage works

(10) the regulation or prohibition of the discharge into or deposit in, drains of sewage, polluted water and other offensive or obstructive matter ,

(11) the regulation or prohibition of the stabling or herding of animals, or of any class of animals, so as to prevent danger to public health ,

(12) the proper disposal of corpses, the regulation and management of burial and burning places and other places for the disposal of corpses and the fees chargeable for the use of such places where the same are provided or maintained by Government or at the expense of the cantonment fund ,

(13) the permission, regulation or prohibition of the use or occupation of any street or place by itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fees chargeable for such use or occupation .

(14) the regulation and control of encamping grounds, pounds washing places, serais hotels, dak-bungalows, lodging houses, boarding houses, buildings let in tenements, residential clubs restaurants, eating-houses, cafes, refreshment rooms and places of public recreation, entertainment or resort

(15) the regulation of the ventilation, lighting, cleansing drainage and water supply of the buildings used for the manufacture or sale of created or other portable waters and of butter, milk, sweetmeats and other articles of food or drink for human consumption .

* The word Board has been substituted by Act 21 of 1936 In Burma and in excluded areas read the words Cantonment Authority

they have been approved and confirmed by the "Central Government"* and published in the "official Gazette"†

(2) The "Central Government"* in confirming a bye-law may make any change therein which appears to it to be necessary

(3) The "Central Government"* may, after previous publication of its intention, cancel any bye-law which it has confirmed, and thereupon the bye-law shall cease to have effect.

285 (1) A copy of all rules and bye-laws made under this Act shall be kept at the office of the "Board"‡ and shall, during office hours, be open free of charge to inspection by any inhabitant of the cantonment

Rules and bye-laws to be available for inspection and purchase

(2) Copies of all such rules and bye-laws shall be kept at the office of the "Board"‡ [and shall be sold to the public at cost price singly, or in collections at the option of the purchaser]§

CHAPTER XVII

SUPPLEMENTAL PROVISIONS

286 The "Central Government"* may, by notification in the "official Gazette"† and subject to any conditions as to compensation or otherwise which it thinks fit to impose, extend to any area beyond a cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX, X, XI, XII, XIII, XIV and XV or of any rule or bye-law made under this Act for the cantonment which relates to the subject-matter of any of those Chapters, and every enactment, rule or bye-law so extended shall thereupon apply to that area as if the area were included in the cantonment

"286A The 'Board' ‡ may empower any of its members or officers to exercise or perform in the absence of the Executive Officer from the cantonment all or any of such powers or duties of an Executive Officer under this Act as the 'Central Government'* may, by notification in the "official Gazette",† specify in this behalf"||

Power to delegate functions of Executive Officer

287 (1) Paragraphs 2 and 3 of section 54, and sections 59, 107 and 123 of the Transfer of Property Act, 1882 ¶ with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment

Registration

"(2) The Registrar or Sub Registrar of the district or sub-district formed for the purposes of the Indian Registration Act, 1908, in which

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‡ The word Board has been substituted by Act 24 of 1936 In B excluded areas read Cantonment Authority

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cantonment, or the destruction, of animals suffering or reasonably suspected to be suffering from any infectious or contagious disease ,

(32) the supervision, regulation, conservation and protection from injury, contamination or trespass of sources and means of public water-supply and of appliances for the distribution of water whether within or without the limits of the cantonment ,

(33) the manner in which connections with water-works may be constructed or maintained and the agency which shall or may be employed for such construction and maintenance ,

(34) the regulation of all matters and things relating to the supply and use of water including the collection and recovery of charges therefor and the prevention of evasion of the same ,

(35) the maintenance of schools, and the furtherance of education generally ,

(36) the regulation or prohibition of the cutting or destruction of trees or shrubs, or of the making of excavations, or of the removal of soil or quarrying, where such regulation or prohibition appears to the "Board" * to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, or the protection of land against erosion, or against the deposit thereon of sand, gravel or stones ,

(37) the rendering necessary of licences for the use of premises within the cantonment as stables or cow-houses or as accommodation for sheep, goats or fowls ,

(38) the control of the use in the cantonment of mechanical whistles, syrens or trumpets and

(39) generally for the regulation of the administration of the cantonment under this Act

283 Any bye-law made by a "Board" * under this Act may provide

Penalty for breach of bye laws that a contravention thereof shall be punishable—

(a) with fine which may extend to one hundred rupees , or

(b) with fine which may extend to one hundred rupees and, in the case of a continuing contravention with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention , or

(c) with fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Board * by the person contravening the bye-law requiring such person to discontinue such contravention

Notes—If no penalty is imposed by a bye law the breach of it is not punishable 18 P R 184 Cr An offence of grazing cattle is not maintainable when no connection is proved between the persons convicted and the cattle 17 N I J 214

284 (1) Any power to make bye-laws conferred by this Act is

Supplemental provisions regarding bye laws conferred subject to the condition of the bye-laws being made after previous publication and of their not taking effect until

* The word Board has been substituted by Act 21 of 1936 In Burma and in excluded areas read the word Cantonment Authority

they have been approved and confirmed by the "Central Government"* and published in the "official Gazette"†

(2) The "Central Government"* in confirming a bye-law may make any change therein which appears to it to be necessary.

(3) The "Central Government"* may, after previous publication of its intention, cancel any bye-law which it has confirmed, and thereupon the bye-law shall cease to have effect.

285. (1) A copy of all rules and bye-laws made under this Act shall be kept at the office of the "Board"† and shall, during office hours, be open free of charge to inspection by any inhabitant of the cantonment

(2) Copies of all such rules and bye-laws shall be kept at the office of the "Board"† [and shall be sold to the public at cost price singly, or in collections at the option of the purchaser]§

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"286A The "Board" † may empower any of its members or officers to exercise or perform in the absence of the Executive Officer from the cantonment all or any of such powers or duties of an Executive Officer under this Act as the "Central Government"* may, by notification in the "official Gazette",† specify in this behalf"||

287 (1) Paragraphs 2 and 3 of section 54, and sections 59, 107 and 123 of the Transfer of Property Act, 1882,† with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment

"(2) The Registrar or Sub-Registrar of the district or sub-district formed for the purposes of the Indian Registration Act, 1908, in which

by G. I. Order of 1937

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B Order of 1937

Burma and in

Act 21 of 1936.
le to the public "

any cantonment is situated shall [when any document relating to immoveable property within the cantonment is registered, send information of the registration]* forthwith to the 'Board'† or such other authority as the [Central Government]‡ may prescribe in this behalf §

Notes—Mortgage by deposit of title deed is invalid if effected in cantonment area even though property is situated in places where such mortgages are valid A I R 1933 Lah 972 see also A I R 1933 Lah 1001

288 No notice order, requisition, licence, permission in writing or other such document issued under this Act shall be invalid merely by reason of any defect of form

Validity of notices and other documents

289 A copy of any receipt, application, plan, notice, order or other document or of any entry in a register, in the possession of a "Board"† shall if duly certified by the legal keeper thereof or other person authorised by the 'Board'† in this behalf be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which the original document or entry would if produced, have been admissible to prove such matters

290 No officer or servant of a 'Board'† shall, in any legal proceeding to which the "Board"† is not a party be required to produce any register or document the contents of which can be proved under section 289 by a certified copy, or to appear as a witness to prove any matter or transaction recorded therein save by order of the Court made for special cause

291 For the purposes of the Government Buildings Act, 1899 || cantonments and "Boards"† shall be deemed to be municipalities and municipal authorities respectively

292 [Repeals] [(Repealed by the Repealing Act 1927 (XII of 1927)]

SCHEDULE I NOTICE OF DEMAND (See section 91)

To residing at				
Take notice that the Board † demands from				the sum
of	due from	on account of		
(here describe the property occupation circumstance or thing in respect of which the sum is payable) leviable under				
commencing on the			for the period of	19
and ending on the			day of	19
			day of	19

* Substituted by Act X of 1927

† The word Board
and in excluded areas for
for the words Boards

‡ In British India the

1937 In Burma for these words read the word Governor — vide G B Order of 1937

§ Substituted by Act XXX of 1926

|| IV of 1899

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and that if within thirty days from the service of this notice, the said sum is not paid to the Board* at _____, or sufficient cause for non payment is not shown to the satisfaction of the Executive Officer, a warrant of distress will be issued for the recovery of the same with costs

Dated this _____ day of _____ 19 .

(Signed)

Executive Officer
Cantonment

SCHEDULE II FORM OF WARRANT (See section 92)

(Here insert the name of the officer charged with the execution of the warrant)
Whereas A B of _____ has not paid, and has not shown satisfactory cause for the non payment of the sum of _____ for the period of _____ 19 , and due on account of _____ day of _____ 19 , which sum is commencing on the _____ day of _____ 19 , and ending with the _____ day of _____ 19 , which sum is leviable under _____

And whereas thirty days have elapsed since the service on him of notice of demand for the same

This is to command you to distrain, subject to the provisions of the Cantonment Act, 1924, the moveable property of the said A B to the amount of the said sum of Rs _____ and forthwith to certify to me, together with this warrant, all particulars of the property seized by you thereunder

Dated this _____ day of _____ 19

(Signed)

Executive Officer,
Cantonment

SCHEDULE III FORM OF INVENTORY OF PROPERTY DISTRAINED AND NOTICE OF SALE (See section 93)

To
residing at _____

here
per
the
of demand and that unless within seven days from the date of the service of this notice you pay to the Board** the said amount together with the costs of recovery the said property will be sold by public auction

Dated this _____ day of _____ 19 .
(Signature of officer executing the warrant)

INVENTORY (Here state particulars of property seized)

SCHEDULE IV CASES IN WHICH POLICE MAY ARREST WITHOUT WARRANT (See section 250)

1	2
Section	Subject

PART A

118 (1) (a) (i)
167

Drunkenness, etc
Making or selling of food etc, or washing of clothes, by infected person

* The word "Board" has been substituted by Act 24 of 1936 But in Burma and in excluded areas read the words "Cantonment Authority"

† Here describe the liability

1	2
Section.	Subject.
PART B.	
118 (1) (a) (ii)	Using threatening or abusive words, etc.
118 (1) (a) (iii)	Indecent exposure of person, etc.
118 (1) (a) (iv)	Begging
118 (1) (a) (v)	Exposing deformity, etc.
118 (1) (a) (vi)	Gaming
118 (1) (a) (xii)	Destroying notice, etc.
118 (1) (a) (xiii)	Breaking direction-post, etc.
118 (1) (f)	Keeping common gaming house, etc.
118 (1) (g)	"
118 (1) (h)	"
119 (6)	
125	
176 (1)	of
193 (2)	to
214	building
236	Feeding animal on filth, etc.
240 (a)	Loitering or importuning for sexual immorality. Remaining in, or returning to, a cantonment after notice of expulsion

SCHEDULE V.
APPEALS FROM ORDERS.
(See section 274)

1	2	3	4
Section.	Executive Order.	Appellate Authority.	Time allowed for appeal
126	[Board's]* notice to repair, protect or enclose a building, wall or anything affixed thereto, or well, tank, reservoir, pool, depression or excavation.	"Officer Commanding-in-Chief, the Command"†[or other authority authorised in this behalf by the Central Government.]‡	Thirty days from service of notice.
134	[Board's]* notice to fill up well, tank, etc., or to drain off or remove water	Ditto ...	Ditto.
137	[Board's]* notice to provide sufficient drainage, etc	Ditto ...	Fifteen days from service of notice.
140	[Board's]* notice requiring a building to be repaired or altered so as to remove sanitary defects.	Ditto ...	Thirty days from service of notice.
176	Order of "Officer Commanding the station"§ on report of Medical Officer, directing a person to remove from the	Ditto ...	Thirty days.

* Substituted by Act 24 of 1936. In Burma and in excluded areas read the words "Cantonment Authority's".

† Substituted by Act 35 of 1926.

‡ The words ["or other authority authorised in this behalf by the Central Government"] have been added by Act 24 of 1936. In Burma and in excluded areas omit these words.

§ The words within quotations have been substituted by Act 7 of 1925.

SCHEDULE—Cont 1

1 Section	2 Executive order	3 Appellate Authority	4 Time allowed for appeal
181	cantonment and prohibiting him from re entering it without permission [Board's]* refusal to sanction the erection or re erection of a building	Ditto Ditto	from the service of notice Thirty days from the date on which refusal shall have been communicated to the person applying for sanction]†
185	[Board's]* notice to alter or demolish a building	Ditto	Thirty days from service of notice Ditto
188	[Board's]* notice to pull down or otherwise deal with a building newly erected or re built without permission over a sewer drain culvert water course or water pipe	Ditto	
206	[Board's]* notice prohibiting or restricting the use of a slaughter house	Ditto	Twenty one days from service of notice
299	Magistrate's notice directing disorderly person to remove from cantonment and prohibiting him from re entering it without permission	District Magistrate	Thirty days from service of notice

SCHEDULE VI

[Enactments repealed] —(Repealed by the Repealing Act XII of 1927)

THE CANTONMENTS (HOUSE-ACCOMMODATION)

ACT, 1923
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- 4 Saving of written instruments

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- 5 Liability of houses to appropriation
- 6 Condition on which houses may be appropriated
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- 9 Sanction to be obtained before a house is occupied as a hospital etc
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- 19 Jurisdiction in reference
- 20 Procedure and powers of the Court
- 21 Restriction of scope of inquiry
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* Substituted Act 24 of 1930 In Burma and in excluded areas read 'Cantonment Authority's

† The words within brackets have been substituted by Act 24 of 1930 In Burma and in excluded areas for these words read 'Thirty days from date of refusal'

1	2
Section.	Subject.
	PART B.
118 (1) (a) (ii)	Using threatening or abusive words, etc.
118 (1) (a) (iii)	Indecent exposure of person, etc
118 (1) (a) (iv)	Begging
118 (1) (a) (v)	Exposing deformity, etc.
118 (1) (a) (vi)	Gaming
118 (1) (a) (vii)	Destroying notice, etc
118 (1) (a) (viii)	Breaking direction post, etc
118 (1) (f)	Keeping common gaming house, etc.
118 (1) (g)	Beating drum etc
118 (1) (h)	
119 (6)	
125	
176 (1)	place of sary.
193 (2)	Destroying, etc, name of street or number affixed to building
214	Feeding animal on filth, etc
236	Loitering or importuning for sexual immorality.
240 (a)	Remaining in, or returning to, a cantonment after notice of expulsion

SCHEDULE V.
APPEALS FROM ORDERS
(See section 274)

1	2	3	4
Section.	Executive Order	Appellate Authority.	Time allowed for appeal
126	[Board's]* notice to repair, protect or enclose a building, wall or anything affixed thereto, or well, tank, reservoir, pool, depression or excavation.	Officer Commanding in Chief the Command [†] [or other authority authorized in this behalf by the Central Government]	Thirty days from service of notice.
134	[Board's]* notice to fill up well, tank, etc, or to drain off or remove water	Ditto	Ditto.
137	[Board's]* notice to provide sufficient drainage, etc	Ditto	Fifteen days from service of notice.
140	[Board's]* notice requiring a building to be repaired or altered so as to remove sanitary defects	Ditto	Thirty days from service of notice
176	Order of "Officer Commanding the station"§ on report of Medical Officer, directing a person to remove from the	Ditto	Thirty days

* Substituted by Act 21 of 1936 In Burma and in excluded areas read the words "Cantonment Authority's".

SCHEDULE—Contd

1 Section	2 Executive order	3 Appellate Authority	4 Time allowed for appeal
181	cantonment and prohibiting him from re-entering it without permission [Board s]* refusal to sanction the erection or re erection of a building	Ditto Ditto	from the service of notice Thirty days from the date on which refusal shall have been communicated to the person applying for sanction]†
185	[Board's]* notice to alter or demolish a building	Ditto	Thirty days from service of notice
188	[Board s]* notice to pull down or otherwise deal with a building newly erected or re built without permission over a sewer drain culvert water course or water pipe	Ditto	Ditto
206	[Board s]* notice prohibiting or restricting the use of a slaughter house	Ditto	Twenty one days from service of notice
238	Magistrate's notice directing disorderly person to remove from cantonment and prohibiting him from re entering it without permission	District Magistrate	Thirty days from service of notice

SCHEDULE VI

[Enactments repealed]—(Repealed by the Repealing Act VII of 1927)

THE CANTONMENTS (HOUSE-ACCOMMODATION) ACT, 1923

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2	Definitions	13	Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase
	CHAPTER II APPLICATION OF ACT	14	Provision where house is held on long lease by a tenant
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	CHAPTER III APPROPRIATION OF HOUSES	17	Power to have repairs executed and recover cost
5	Liability of houses to appropriation	18	Notice to be given of devolution of interest in house in cantonment
6	Condition on which houses may be appropriated		CHAPTER IV PROCEDURE IN REFERENCES
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10	Houses not to be appropriated in certain cases		[22—23]—Repealed by Act IX of 1930
11	Time to be allowed for giving possession of house		

* Substituted Act 21 of 1936 In Burma and in excluded areas read 'Canton Authority s

† The words within brackets have been substituted by Act 24 of 1936 In Burma in excluded areas for these words read 'Thirty days from date of refusal'

CHAPTER V.

APPEALS.

Sections.

29. Appeal to High Court
 30. Appeal to the Officer Commanding the District.
 31. Petition of appeal
 32. Order in appeal final
 33. Suspension of action pending appeal.

CHAPTER VI

SUPPLEMENTAL PROVISIONS

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- 34A. Computations of periods of limitation.
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SCHEDULE—[Repealed]

THE CANTONMENTS (HOUSE-ACCOMMODATION) ACT, 1923.

ACT NO. VI OF 1923.

Received the assent of the Governor-General on the 5th March, 1923.

An Act further to amend and to consolidate the law relating to the provision of house accommodation for military officers in cantonments

Whereas it is expedient further to amend and to consolidate the law relating to the provision of house accommodation for military officers in cantonments ; It is hereby enacted as follows :—

Object of the Act—"For many years past we have had under consideration the question of house accommodation in cantonments. In the early days of the British dominion in India, the camps, stations and posts of the field army developed into cantonments where troops were stationed in garrison. These cantonments were localities set apart for the purposes of persons and was

"In later years, owing to various circumstances, great difficulties have been experienced in working the regulations applicable to cantonments, and the difficulties of finding suitable accommodation for officers—especially for those obliged to live in a particular part of cantonments, have much increased

"The whole question has been exhaustively considered by specially appointed committees and by other authorities, it has been discussed in every possible aspect and the bill is the out come of the and we have recognised by the regulations in force were intended for occupy

houses were built in many cases by own use, but as a source of profit, holders the burden of proving it and ought not to be subjected requirements dictate in a locality which has been set apart for military purposes. The necessity for securing house accommodation for the military and civil officers of the Government is essential but we have endeavoured to safeguard the interests of the house owners, and to remove any reasons for complaint on the part of the latter—
Proceedings in Council of Act II of 1902.

CHAPTER I

PRELIMINARY.

Short title, extent and commencement

1. (1) This Act may be called the Cantonments (House-Accommodation) Act, 1923

[(2) It extends to the whole of British India (inclusive of British Baluchistan*)]†

(3) It shall come into force on the first day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3.

Provided that any notification made under section 3 of the Cantonments (House-Accommodation) Act, 1902,† which is in force at the commencement of this Act shall be deemed, to be a notification made under section 3 of this Act

Definitions

2 (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "Brigade area" means one of the Brigade areas, whether occupied by a brigade or not, into which [India]§ is for military purposes for the time being divided, and includes any area which the [Central Government]|| may, by notification in the [official Gazette,]¶ declare to be a Brigade area for all or any of the purposes of this Act,

(b) **

††[(bb) 'Cantonment Board' means a Cantonment Board constituted under the Cantonments Act, 1924]

[(c) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the [Central Government]|| may, by notification in the [official Gazette,]¶ declare to be a Command for all or any of the purposes of this Act,]††

[(d) "Officer Commanding the station" §§ means the officer for the time being in command of the forces in a cantonment, "or, if that officer is the [Officer Commanding the District]||| the military officer who would be in command of those forces in the absence of the [Officer Commanding the District]|||""

[(e) 'District' means one of the Districts into which India is for military purposes for the time being divided, it includes a Brigade

* After this the words "except Aden" have been omitted by G. I. Order of 1937

† Sub section (2) has been omitted in Burma—vide G. B. Order of 1937

‡ II of 1902

§ In Burma for India substitute Burma (vide G. B. Order of 1937)

|| In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma read Governor' (vide G. B. Order of 1937)

¶ In British India the words 'official Gazette' have been substituted by G. I. Order of 1937 In Burma read Gazette (vide G. I. Order of 1937)

** Clause (b) has been omitted by Act IX of 1930

†† Inserted by Act 10 of 1925

— er of 1937)

the words General

area which does not form part of any such District and any area which the [Central Government]* may, by notification in the [official Gazette],† declare to be a District for all or any of the purposes of this Act,]‡

(f) 'house' means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house,

(g) 'military officer' means a commissioned or warrant officer of His Majesty's military or air forces on military or air force duty in a cantonment, and includes a Chaplain on duty with troops in a cantonment, 'an officer of the Cantonments Department' and any person in Army departmental employment whom the [Officer Commanding the District]§ may at any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act,

(h) 'owner' includes the person who is receiving or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant and

(i) a house is said to be in a state of reasonable repair when—

(i) all floors, walls, pillars and arches are sound and all roofs sound and watertight

(ii) all doors and windows are intact, properly painted or oiled and provided with proper locks or bolts or other secure fastenings and

(iii) all rooms out-houses and other appurtenant buildings are properly colour-washed or white-washed

(2) if any question arises whether any land or building is appurtenant to a house, it shall be decided by the "Officer Commanding the station" whose decision thereon shall be subject to revision by the "Collector" and be final

Notes — Where there are different statutes in *pari materia* though made at different times or even expired and not referring to each other they shall be taken and construed together as one system and as explanatory of each other *R v Loidale* 1 Bur 447 see also *Goldsmith v Walf* (1907) 76 L J K B 169 But it is proper to refer to earlier Acts in *pari materia* only where there is an ambiguity *R v Tullett* [1895] 2 Q B 67 see also *Sutton v Sutton* 52 L J Ch 337 *Shaw v Crompton* 80 L J K B 56

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma read Governor' (vide G B Order of 1937)

† In British India the words 'official Gazette' have been substituted by G I Order of 1937 In Burma read Gazette (vide G B Order of 1937)

‡ " " "

" " "

er of 1937)

' read the words

Substituted by Act IV of 1930.

CHAPTER II

APPLICATION OF ACT

3 (1) The [Central Government]* may by notification in the [official Gazette]† declare this Act to be operative in any cantonment or part of a cantonment ‡ [other than a cantonment situate within the limits of a presidency-town]§

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the [Central Government]* shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification, and what portion (if any) of the area proposed to be included therein should be excluded therefrom

Notes—This provision is made in order to give time for authorities to make necessary arrangements to enable effect to be given to the amended law—*Report of the Select Committee*

[4 Nothing in this Act shall affect the provisions of any written Crown contract unless all the parties to that contract consent in writing to be bound by the terms of this Act]||

Notes—This section does not clearly apply to a licence under General Order No 179 unless the Secretary of State and the other party entitled to consent to be bound by the terms of the Act and consent in writing 164 Ind Cis 1016—A I R 1936 Lah 592

CHAPTER III

APPROPRIATION OF HOUSES

5 Every house situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force shall be liable to appropriation by the 'Central Government ¶ on a lease in the manner and subject to the conditions hereinafter provided

Notes—Now I desire to make it very plain at the outset that the Government of India are unable to admit that the cantonment areas can be regarded in the same light as the other parts of the country. On the contrary special and totally different from the circumstance in asserting that this fact is well known and resented of any of the permanent military stations—*Proceedings of Council as regards the previous Act*

* Substituted in British India by G I Order of 1937 In Burma for the words within brackets read Governor—*Vide G B Order of 1937*

† Substituted in British India by G I Order of 1937 In Burma for the words within brackets read Gazette—*Vide G B Order of 1937*

‡ Certain words after this repealed by G I Order of 1937 have been omitted
§ In Burma for the words within brackets read situate in British Burma—*Vide G B Order of 1937*

¶ Substituted in British India by G I Order of 1937 In Burma read the following—
4 Nothing in this Act shall affect the provisions of any written instrument executed by or on behalf of the East India Company or the Government unless the other party entitled and the Government consent in writing to be bound by the terms of this Act

* Substituted in British India by G I Order of 1937 In Burma for these words read Government

Condition on which houses may be appropriated * '6 (1) Where—

(a) a military officer who is stationed in or has been posted to the cantonment or a President of a military mess in the cantonment, applies in writing to the Officer Commanding the station stating that he is unable to secure suitable accommodation in the cantonment for himself or the mess on reasonable terms by private agreement, and that no suitable house or quarter [belonging to the Crown][†] is available for his occupation or for the occupation of the mess, and the Officer Commanding the station is satisfied on inquiry of the truth of the fact so stated, or

(b) the Officer Commanding the station is satisfied on enquiry that there is not in the cantonment a sufficient and assured supply of houses available at reasonable rates of rent by private agreement to meet the requirements of the military officers and military messes whose accommodation in the cantonment is in his opinion necessary or expedient,

the Officer Commanding the station may with a view to enforcing the liability under section 5, serve a notice on the owner of any house which appears to him to be suitable for occupation by a military officer or a military mess as the case may be within the cantonment, or, if this Act is in force in part only of the cantonment, within that part, requiring the owner to permit the house to be inspected, measured and surveyed by such person and on such date, not being less than three clear days from the service of the notice and at such time between sunrise and sunset, as may be specified in the notice

(2) On the date and the time so specified the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purposes of the inspection, measurement and survey of the house and, if he refuses or neglects to do so, such person may, subject to any rules made under this Act enter on the premises and do all such things as may be reasonably necessary for the said purpose'

Notes—The amendment of sec on 6 by Act IX of 1930 is designed to afford a clearer definition of the circumstances in which the liability under section 5 may be enforced than the somewhat obscure instructions at present contained in section 8. Two main sets of

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occupation by a military officer or a military mess—Notes on Clauses

Report of the Select Committee—The

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* Substituted by Act IX of 1930

[†] In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read belonging to Government, 11th G. I. Order of 1937

* We have somewhat extended the notice to be given under this section by expressing it to be three clear days' notice.

† It seems advisable that the power of inspection should only be exercised between sunrise and sunset.

We have supplied an obvious omission providing for application in respect of a military mess.

The other changes in this clause are simply of a drafting nature designed to make the meaning more clear.

7 (1) If, on the report of such person as aforesaid the 'Officer Commanding the station' * is satisfied that the house is suitable for occupation by a military officer or a military mess, he may,† by notice—

Procedure for taking house on lease

(a) require the owner to execute a lease of the house [to the Central Government]‡ for a specified period which shall not be less than five years,

(b) require the existing occupier, if any, to vacate the house, and

(c) require the owner to execute within such time as may be specified in the notice such repairs as may, in the opinion of the "Officer Commanding the station," * be necessary for the purpose of putting the house into a state of reasonable repair.

(2) Every notice issued under sub-section (1) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the required repairs, if any. It shall also contain an estimate of the cost of such repairs.

(3) The following shall be deemed to be conditions of every lease executed under sub-section (1) namely—

(a) that the house shall on the expiration of the lease, be re-delivered to the owner in a state of reasonable repair, and

(b) that the grounds and the garden if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed.

"Provided that nothing in this sub-section shall be deemed to affect the right of the Government to avoid the lease in any such event as is specified in clause (e) of section 108 of the Transfer of Property Act, 1882."

Notes—Section 7 (3) (1) of the Act as it stands at present makes it incumbent upon the owner to execute such repairs as may be necessary for the purpose of putting the house into a state of reasonable repair, and the grounds and the garden if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed. This is a result of fire ten not to be held a result of the wrongful act or from the principle of the lessor but they see above and the Bill the same extent as

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* Substituted by Act V of 1923

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8 *[Procedure to be observed before taking a house on lease]*
(Repealed by Act IX of 1930)

9. No house in any cantonment or part of a cantonment in which this Act is operative shall, unless it was so occupied at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902,* as the case may be, to be operative, be occupied for the purposes of a hospital, school, school-hostel, bank, hotel, or shop, or by a railway administration, a company or firm engaged in trade or business or a club, without the previous sanction of the [Officer Commanding the District]† given with the concurrence of the Commissioner [or, in a province where there are no Commissioners, of the Collector]‡

Houses not to be appropriated
 in certain cases

10 No notice shall be issued under section 7 if the house—

(a) was, at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902,* as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school, school-hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or

(b) was, at the date of such a notification as is referred to in clause (a), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or

(c) is occupied by the owner, or

(d) has been appropriated by the ["Provincial Government"§ with the concurrence of the Officer Commanding the District or by]|| the [Central Government]* for use as a public office or for any other purpose

11 (1) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the 'Officer Commanding the station ** within twenty-one days from the service of the notice

Time to be allowed for giving
 possession of house

(2) If a house is occupied, a notice issued under section 7 shall not require its vacation in less than thirty days from the service of the notice

* II of 1902

† In 1937, for the

'General Officer

by ; mitted

of 1937) Order

** Substituted by Act 10 of 1925.

(3) Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated

Notes—In case of unoccupied house the owner is entitled to 21 days' notice, but in case of occupied house a notice of not less than a month is required

12 If the owner fails to give possession of a house to the 'Officer Commanding the station'* in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate by himself or by another person generally or specially authorised by him in this behalf, shall enter on the premises and enforce the surrender of the house

Notes—By this section special power is given to the District Magistrate to take possession of the house by entry on the premises

Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase

13 (1) If a house in respect of which a notice is issued under section 7 is shown to the satisfaction of the [Central Government]† or is proved by a decree or order of a Court of competent jurisdiction, to have been erected—

(a) under any conditions rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, [or

(b) under any conditions rules regulations or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (a)]‡

then the owner shall have the option of either complying with the notice or offering the house for sale to the [Central Government]§

(2) If the owner elects to sell the house and the [Central Government]§ is willing to purchase it, the question of the amount of the purchase-money to be paid shall in the event of disagreement, be referred to a 'Civil Court, in accordance with the provisions of Chapter IV ||

14 (1) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year the [Central Government]§ shall, for the term of one year from the date on which the house is vacated in pursuance of the notice or for the unexpired term of the lease whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable

* Substituted by Act X of 1975

† Substituted by G. I. Order of 1937 In Burma read the word Governor (vide G. B. Order of 1937)

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(2) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the [Central Government]* shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice

(3) Nothing in this section shall be deemed—

(a) to render the [Central Government]* so liable unless an application in writing in this behalf is made by the owner to the 'Officer Commanding the station' † within fifteen days from the service of the notice, or

(b) to limit or otherwise affect any agreement between the [Crown]* and the owner

15 (1) If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of "thirty" ‡ days from the service of such notice, "refer the matter to a Civil Court, in accordance with the provisions of Chapter IV" †

Power for owner to require reference to arbitration on question of rent

"Provided that where an appeal has been made to the [Officer Commanding the District] § under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub section (2) of section 32 ||

(2) If the owner does not make such a requisition within the said period he shall be deemed to have accepted the rent so offered

Notes—It is the owner alone who can make a reference to the Civil Court. A mortgagee need not be made a party to such a reference. 167 Ind Cas 158=A I R 1937 Pesh 17

16 (1) If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7 the 'Officer Commanding the station' † may by notice require the owner to execute the repairs within such period, not being less than 'thirty' ‡ days, as may be specified in the notice

Power for owner to require reference to arbitration on question of repairs

(2) If the owner objects to any requisition contained in a notice issued under sub section (1) he may within 'thirty' ‡ days from the service of the notice "refer the matter to a Civil Court, in accordance with the provisions of Chapter IV" †

'Provided that where an appeal has been made to the [Officer Commanding the District] § under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub section (2) of section 32' ||

* Substituted by G I Order of 1937. In Burma read for the words 'Central Government' the word 'Government' and for the word 'Crown' read the following: 'Secretary of State for India in Council or the Government'—I, le G B Order of 1927

† Substituted by Act V of 1925

‡ Substituted by Act IV of 1930

§ In Burma for the words within brackets read 'General Officer Commanding the Forces in Burma'—I, le G B Order of 1927

|| Inserted by Act 22 of 1933

(3) 'Every reference under sub-section (2) shall be accompanied by an estimate of the repairs, if any, which the owner considers necessary in order to put the house into a state of repair'.

†[17 If the owner fails to comply with a notice issued under sub-section (1) of section 16, the Military Engineer Services or the Public Works Department may, with the previous sanction of the Officer Commanding the station† and notwithstanding any right of reference conferred by that section, caused the repair specified in the notice to be executed at the expense of the [Central Government]§ and the cost thereof, or, where a reference has been made, the amount finally determined by the Civil Court, may be deducted from the rent payable to the owner].

Notes — The new section makes it clear that the owner's failure to execute the repairs is not a ground for forfeiture of the house, but that the appropriate authority may, with the previous sanction of the Officer Commanding the station, cause the repairs to be executed at the expense of the [Central Government] and the cost thereof, or, where a reference has been made, the amount finally determined by the Civil Court, may be deducted from the rent payable to the owner.

18 Every person on whom devolves, by transfer, by succession or by operation of law the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the fact to the 'Officer Commanding the station ‡ within one month from the date of such devolution, and, if he, without reasonable cause fails to do so, he shall be punishable with fine which may extend to fifty rupees

Notes — This section only refers to the case where rent is fixed by the Committee of the very commencement of the tenancy but enhancement until the commencement of repairs he is not entitled to enhance rent
such 97 Ind Cas 71 (2) = 1 I R 1926 A

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†[CHAPTER IV]

PROCEDURE IN REFERENCES

†[19 All references under this Act shall be made by application to and tried by, the Court of the District Judge]

†[20 References under this Act shall be deemed to be proceeding within the meaning of section 141 of the Code of Civil Procedure 1908 || and in the trial thereof the Court may exercise any of its powers under that Code]†

* Inserted by Act IX of 1930

† Substituted by Act IX of 1930

‡ Substituted by Act 10 of 1925

§ In British India the words Central Government have been substituted by G I Order of 1937 In Burma for the words Central Government read Government — I: 1: G I Order of 1937

|| V of 1908

*[21 The scope of the inquiry in a reference under this Act shall be restricted to a consideration of the matters referred to the Court in accordance with the provisions of this Act"]

[SS 22—28]—(*Repealed by Act IX of 1930*)

CHAPTER V

APPEALS

†[29 (1) An appeal shall lie to the High Court against the decision of the Court of the District Judge upon a reference tried by it

Appeal to High Court

(2) No appeal under this section shall be admitted unless it is made within thirty days from the date of the decision against which it is preferred

(3) An appeal preferred under this section shall be deemed to be an appeal from an order within the meaning of section 108 of the Code of Civil Procedure, 1908 ‡]

Notes—The amended section provides for the appeal to the High Court, in place of the appeal to the Civil Court which previously lay from the decision of the Arbitration Committee—*Notes on Clauses*

†[30 The owner or any tenant of a house in respect of which a notice has been issued under section 7 may within a period of "ten"§ days from the date of the service thereof, appeal to the [Officer Commanding the District]|| against the decision of the Officer Commanding the station * to appropriate the house]

Notes—The amendment is consequential on the alteration of the definition of the Officer Commanding the station—*Notes on Clauses*

31 (1) Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against

(2) Any such petition may be presented to the 'Officer Commanding the station,' and that officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against

(3) If any such petition is presented direct to the [Officer Commanding the District]|| and an appeal is not necessary, the [Officer Commanding the station] shall refer the petition to the 'Officer Commanding the station'

††[32 (1) The decision on any such appeal of the [Officer Commanding the District]||** shall be final, and shall not be questioned in any Court

* Substituted by Act IX of 1930

† V of 1908

† Inserted by Act IX of 1930

§ Inserted by Act 22 of 1933

|| Officer Com

otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment in which this Act is not operative

Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner, and 'and in giving a decision the [Officer Commanding the District]* shall record briefly the grounds therefor' †

‡[(2) Notice of the result of the appeal shall be given to the appellant as soon as may be, and, where the appellant is a tenant of the house, to the owner of the house also]

Notes—Express words are necessary to take away the jurisdiction of superior Courts
P v Dhillon (1920) 20 F 250—this section such jurisdiction is taken away by express implication as well *Cates v Knight* 3 T R 445
Jacobs v Drift L R 20 Eq 6 see *Crip v Bunbury* (1852) 18 Q B 882 *Wright v Monarch Investment*

Proviso—The amendment by Act IX of 1930 requires the Officer Commanding the District to record his reasons when deciding an appeal which was not previously necessary—*Notes on Clauses*

33 Where an appeal has been presented under section 30 within the period prescribed 'there in § all action on the notice shall on the application of the appellant, be held in abeyance pending the decision of the appeal

Notes—This section is based on the general principles of law that pending the appeal all action should be suspended

CHAPTER VI

SUPPLEMENTAL PROVISIONS

34 Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed or in the case of an owner who does not reside in or near the cantonment, on his agent appointed "in accordance with a bye-law made under clause (29) of section 282 of the Cantonments Act 1924 ||

Notes—As regards the service of notice requirement must be strictly fulfilled 35 C 191 12 C L J 4 Sending notice by post is sufficient *Petail Dairy Co v Clarke* (1912) 2 K B 388

* [34A The period prescribed for making any reference or preferring any appeal under this Act shall be computed in accordance with the provisions of the Indian Limitation Act, 1908]

Computations of periods of limitation

* For the words within brackets in Burma read the words General Officer Commanding the Forces in Burma—*Vide* G B Order of 1937

† Added by Act IX of 1930

‡ Section 3^o has been numbered as sub section (1) of section 32 and sub section (2) has been added by Act 22 of 1933

§ Substituted by Act IX of 1930

|| Inserted by Act X of 1930

* Section 34 A has been inserted by Act IX of 1930

Power for [Central Govern
ment]* to make rules

35 (1) The [Central Government]* may make rules to carry out the purposes and objects of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

† (b) define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this Act or of any rule made hereunder

Notes — We have not in rules which may be made in referred in our remarks in clu under the power conferred b
Committee

- Call any
have
made
elect

36 (1) The power to make rules under section 35 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the [official Gazette]† and in such other manner (if any) as the [Central Government]* may direct

(2) Any rule under section 35 may be general for all cantonments or parts of cantonments in [British India]§ in which this Act is for the time being operative, or may be special for any of such cantonments or parts as the [Central Government]* may direct

(3) A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Authority.

(4) In making any rule under clause (b) of subsection (2) of section 35, the [Central Government]* may direct that whoever obstructs any person not being a public servant within the meaning of section 21 of the Indian Penal Code in making any entry, inspection, or search, shall be liable to a fine which may extend to five rupees for

Notes—Sub section (1) provides that rules should be made after previous publication. It does not matter if the rules finally published differ in some details from the draft rules previously published. 31 A 391

37 No Judge or Magistrate shall be deemed within the meaning of section 556 of the Code of Criminal Procedure, 1898, to be a party to, or personally interested in any prosecution for an offence constituted by or under this Act

Inapplicability of section 556 of the Code of Criminal Procedure 1898 to trials of offences

* In British India the words within brackets have been substituted by G. I. Order of 1937. *vide* G. B. Order of 1937.

1937
§ 1

1937 }
|| } of 1898

merely because he is a member of the Cantonment 'Board'* or has ordered or approved the prosecution

Notes—Section 556 of the Criminal Procedure Code is based on the rule that no person should be a Judge in a case in which he has a distinct and substantial interest *Vide* 2 C 23 20 C 857 The term *personal interest* signifies an interest or advantage to be gained 8 Bom L R 917 It does not include remote interest 15 A 192 see also 46 C 854 23 C 294

38 No suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.

Notes—When an act is done by a person in excess of his powers or in a wanton and careless use of them an action lies for an injury *Vide* *Ricket v Dir ctors etc* 2 A L J 175 at p 202 see also 21 M 114 8 M L T 201

39 [Repeals] (Repealed by Act XII of 1927)

[THE SCHEDULE]

(Repealed by Act XII of 1927)

THE CATTLE TRESPASS ACT (I OF 1871)

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SCHEDULE

THE CATTLE TRESPASS ACT, 1871.

ACT NO 1 OF 1871

[Received the assent of the Governor-General on the 13th January, 1871]

An Act to consolidate and amend the law relating to
Trespasses by Cattle

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle, It is hereby enacted as follows —

Preamble

CHAPTER I

PRELIMINARY

Title and extent

1 (1) This Act may be called the Cattle-Trespass Act, 1871, and

*[(2) It extends to the whole of British India, except the Presidency-towns and such local areas as the "Provincial Government"† by notification in the official Gazette, may from time to time exclude from its operation]‡

Noting That the said Act was passed by the Council of the Governor-General on the 2nd of 1872

Legislative Changes — This section was substituted by the Cattle Trespass (Amendment) Act I of 1891

... on (a) —
of this Act —

7. In Burma

S. 2. [Repeal of Acts]—(Repealed by Act I of 1938.) *

Interpretation clause.

3. In this Act,—

[“officer of police” includes also village watchman, and]†

“cattle” includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids, and

“local authority” means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

“local fund” means any fund under the control or management of a local authority.

CHAPTER II.

POUNDS AND POUND-KEEPERS.

4 Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the [Provincial Government,]† from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Private pounds—The maintenance of private cattle pounds is incompatible with the provisions of this Act, although the Act does not expressly provide for confiscating private rights, nor does it lay down that there shall be no pounds save those established by the District Magistrate. *Bir Bikram v Secretary of State*, 16 C. W. N 862=39 C. 615 P C

5. The pounds shall be under the control of the Magistrate of the District, and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Control of pounds Rates of charge for feeding impounded cattle

Appointment of pound keepers

[6. The Provincial Government shall appoint a pound-keeper for every pound.]§

Pound keepers may hold other offices

Any pound-keeper may hold simultaneously any other office under Government.

Pound keepers to be ‘public servants’

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

* The following section 2 which has been repealed in British India by Act I of 1938 is in force in Burma —

The Acts mentioned in the Schedule hereto annexed are repealed

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act

All pounds established pound keepers appointed and villages determined under Act No. III of 1857 (relating to trespasses by cattle), shall be deemed to be respectively established appointed and determined under this Act

†
for th
§
the
each

“Burmese” in the Act of 1857

Duties of Pound keepers

To keep registers and furnish returns

7 Every pound-keeper shall keep such registers and furnish such returns as the [Provincial Government]* from time to time directs

To register seizures

8 When cattle are brought to a pound, the pound keeper shall enter in his register,—

- (a) the number and description of the animals,
 - (b) the day and hour on and at which they were so brought,
 - (c) the name and residence of the seizer, and
 - (d) the name and residence of the owner if known,
- and shall give the seizer or his agent a copy of the entry

To take charge of and feed cattle

9 The pound-keeper shall take charge of feed and water the cattle until they are disposed of as hereinafter directed

CHAPTER III

IMPOUNDING CATTLE

Cattle damaging land

10 The cultivator or occupier of any land,

or any person who has advanced cash for the cultivation of the crop or produce on any land

or the vendee or mortgagee of such crop or produce or any part thereof

may seize or cause to be seized any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon and [send them or cause them to be sent within twenty four hours]† to the pound established for the village in which the land is situate

All officers of police shall when required aid in preventing

Police to aid seizures

- (a) resistance to such seizures and
- (b) rescues from persons making such seizures

Who may seize—

N 357=20 Cr L J 398

the labour of sowing
of occupiers 23 C W

Extent of right —In the case of cattle which trespass on a man's land his right to seize them exists only while they are trespassing If they have left the land he has no

J 1004=81 Ind
258 1934 Cr C
any damage, the

* The words with in brackets have been substituted by G I Order of 1937 In Burma for the words within brackets read the word Governor — vide G I Order of 1937

† The words within brackets have been substituted by Act I of 1931

from destroying the trees, failed to do so, *held*, that he was properly convicted under s 42G, I P C. Driving of cattle on the road and then not controlling them in doing what they are almost certain to do unless prevented, might be regarded as a causing of damage Rat. Un Cr C. 318.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon, and shall [send them or cause them to be sent within twenty-four hours to the nearest pound] *

Application—As to the application of this Act to forests, *vide* Act 7 of 1878 s 69, Bur Act 4 of 1902, s 49, 7 of 1901, s 66 As regards its application to Railways, *vide* Act 9 of 1900, s 125

Taking to the pound.—It is not necessary that a person, who seizes or causes cattle to be seized, must take them in person to the pound, in order that the rescuing of the cattle may amount to an offence under section 24 12 P R 1882 Cr A straying cattle may be seized and impounded before damage is caused Person responsible for it can also be convicted A. I R 1934 Sind 34=28 S L R 73=35 Cr L J 830

Reserved Forest—If cattle were found straying in a reserved forest the seizure of the same would be legal even if no damage had actually been done, in as much as s 69 of the Forest Act makes this section applicable to forest 22 B 933

†**12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Government in this behalf by notification in the official Gazette. Different scales may be prescribed for different local areas.**

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound].

CHAPTER IV.

DELIVERY OR SALE OF CATTLE

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper

* The words within brackets have been substituted by Act I of 1901

† This section was substituted by Act 17 of 1921.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating, —

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market place nearest to the place of seizure

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit

15 If the owner or his agent appear and refuse to pay the said fines and expenses on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him

16. If the owner or his agent appear and refuse or omit to pay or deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase money (if any) paid to him according to such account

Receipt

Disposal of fines expenses and surplus proceeds of sales

17 The officer by whom the sale was made shall send to the Magistrate of the District, the fines so deducted

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District who shall hold them in deposit for three months and, if no claim thereto be preferred and established within that period, shall at its expiry, [be deemed to hold them as part of the revenues of the Province]*

†18 [*Application of fines and unclaimed proceeds of sale*]—
(*Repealed by G. I Order of 1937*)

Officers and pound keepers not to purchase cattle at sales under Act

19 No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act

No pound-keeper shall release or deliver any impounded cattle other-

Pound keepers when not to release impounded cattle

wise than in accordance with the former part of this Chapter unless such release or delivery is ordered by a Magistrate or Civil Court

Purchase—A sub inspector of police who indirectly purchases pony sold under this section cannot be convicted under ss 405 and 406 of the Indian Penal Code 8 B L R App 1

CHAPTER V †

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION

20 Any person whose cattle have been seized under this Act,

Power to make complaints

or, having been so seized, have been detained in contravention of this Act, may,

at any time within ten days from the date of the seizure make a

* In British India the words within brackets have been substituted by G. I Order of 1937 In Burma read the words "dispose of them as hereinafter provided"

† Section 18 has been omitted in British India But in Burma this section which is in force runs as follows —

18 Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(a) the salaries allowed to pound keepers under the orders of the Governor

for any

instruction

complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District

only
title
on of
s 10
30 Cr

Jurisdiction—The illegal seizure of cattle mentioned in this section is an offence under s 4 cl (c) of the Criminal Procedure Code and according to the last clause of Schedule

procedure 23 C 418

Complaint—The inclusion of s 4 (c) of the Cr Pro Code in the definition of offence of an act in respect of which a complaint may be made under section 20 of Cattle Trespass Act renders it unnecessary for a Magistrate who is generally empowered under the Cr P C to receive complaints of offences to be specially authorised by the District Magistrate to receive complaints under that section of the Act 50 M 841=25 L W 282-100 Ind Crs 381=A I R 1927 Mad 396-28 Cr L J 301=52 M L J 251 see also 44 B 42 34 C 926 A complaint made by wrong person is not a complaint and the defect is not cured by s 537 A servant actually present at the time of the seizure might make a complaint under s 20 when the owner himself is unable to do so or when there was no agent who was able to make a complaint for the owner A I R 1931 Nag 98=27 N L R 107=132 Ind Cas 457 32 Cr L J 596

Complaint after 10 days—Where the occurrence was alleged to have taken place on the 29th September 1933 but the complaint was filed only on the 10th October 1933 it is time barred under s 20 Such a complaint is not sustainable 38 C W N 1072, see also 39 Mys II L R 1023-13 Mys L J 55

Offence—By sect on 4 (c) of the Criminal Procedure Code of 1898 the word 'offence' includes an act in respect of which a complaint may be made under section 20 of the Act 20 M 517=5 Cr L J 86 Rulings laid down in 3 C 394 15 C 712 18 A 353 and 9 M 102 have been made obsolete by Act 5 of 1898

Charges—The term charges in this section is used as equivalent to complaint 11 C P L R 10 Cr

Transfer—Magistrate receiving a complaint under this section may transfer the case to a Subordinate Magistrate for disposal 26 P R 1879 Cr

ution is not confined
criminal prosecutions
(a) damage to man's
A suit for damages
t les, because there

may be damages to the reputation of the person accused (Per Seshagiri Ayer) 31 M L J 479=37 Ind Cas 314-20 M L T 308

Authorization of Magistrate—A Magistrate authorized under section 190, Criminal Procedure Code to take cognizance of offences upon receiving complaints can take cognizance of an offence under this section even in the absence of a special authorization in that behalf 44 B 42=21 Bom L R 1091

21 The complaint shall be made by the complainant in person or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case

Who can complain—The person who is in charge of the cattle at the time of the category of 'an agent' R 201 The person a person or an agent belonging to A and personally acquainted with his section 5 Bom see 1923 Nag 156 personally acquainted'

means agent who has some personal knowledge of circumstances relating to seizure of cattle He need not however be an eye witness 32 Cr L J 896=27 N L R 167=A I R 1931 Nag 93 see also 39 Mys H L R 1023

Duty of Magistrate—This section enjoins the District Magistrate to summon the person complained against and to make an enquiry into the case but non compliance with provisions of this section does not affect the merits of the case But if non compliance with the provisions of this section for the effect of making the order of District Magistrate illegal a suit for compensation would lie Such suit is governed by Article 2 of the Limitation Act 39 P L R 915=A I R 1937 Lah 748

Stamp—As illegal seizure and detention is an offence under section 4 (b) of the Criminal Procedure Code (V of 1898) complaints of illegal seizure and detention require stamp under Schedule II clause (b) of the Court Fees Act By this change the ruling laid down in 8 B H C R Cr 22 is made obsolete

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

and, if the cattle have not been released the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle

Scope—Illegal seizure of cattle is not an ordinary criminal offence Jurisdiction is given to any person complaining of seizure and detention as well as any fines incurred in the release of the cattle 2 C L R to award compensation under s 250 of accused is not convicted of an offence

—ent for an offence and therefore followed by a sentence of imprisonment 423 A proceeding under a civil proceeding in which a manner compensation for an such compensation is ordered onate amount payable by each In awarding compensation, the may be included in the compensation by way of penalty 25 P 1840 Cr A Magistrate is not A Magistrate may also include the cost of the Court and process etc. A complaint makes a specific claim about it L J 278=A I R 130 Nag 149 I ven in ent the Court can award compensation to the L R 201 A sentence of imprisonment

default of payment of compensation under s 22 of the Cattle Trespass Act is illegal 26 N L R 158=121 Ind Cas 665-31 Cr L J 278=A I R 1930 Nag 149 Where the complaint is lodged by an agent the Magistrate can award reasonable compensation which will be paid to the complainant (owner of cattle) and not to the agent who made the complaint 116 Ind Cas 424=30 Cr L J 633-1929 Cr C 18=A I R 1929 Nag 152 The word 'agent' includes not only an agent in the ordinary sense, but also a servant, but does not include an agent, who lives at a distance and who has received information of the seizure at second hand A I R 1931 Nag 98 There is no restriction in the Act that the Court cannot award compensation unless it is claimed in the complaint 103 Ind Cas 80=29 Cr L J 325=A I R 1929 Mad 369 A grazer of cattle is an agent of the owner 116 Ind Cas 424=30 Cr L J 63-A I R 1929 Nag 152

sentence
award of
V. N. 32,

Award of compensation—Where no compensation is claimed in the petition of complaint and no allegation is made as to the loss caused by the seizure of the cattle, no compensation can be awarded under this section 4 Pat L T 231=24 Cr L J 311=72 Ind Cas 71 but see A I R 1923 (Mad) 369 If the Court is of opinion that the seizure was illegal and that loss has been caused to the complainant thereby, it is its duty to award compensation for such loss to the complainant even though he actually does not lay a claim for it in his petition of complaint 159 Ind Cas 154=1923 A L J 1113=A I R 1935 All 925 Pleader's fee cannot be awarded A I R 1933 Mad 502=144 Ind Cas 154-1933 M W N 549=65 M L J 24=34 Cr L J 676, 44 Ind Cas 237

Appeal—No appeal lies from an award of compensation passed under this section 3 N W P 200 15 C 712 Rat Un Cr C 520 11 M 359 10 B 230, 19 M 233=2 Weir 461 (contra) 4 L B R 10=6 Cr L J 121 Where it was held that an order under this section is a conviction under section 407 of the Criminal Procedure Code By section 4 of the Code of Criminal Procedure 1893 the word 'offence' includes an act in respect of which a complaint can be made under section 20 of the Cattle Trespass Act It follows, made is a "person", under section 407 de, applies to a case frivolous complaint to the accused but Weir 320=29 M 517,

A writ *habeas corpus* and a writ *certiorari* have been made obsolete by section 4 (o) of Act V of 1893 Now an appeal lies under section 403 of the Criminal Procedure Code from an order of compensation and re payment of fine under this section 23 Bom L R 536

Summary proceedings—The summary proceedings laid down in Ch XXII of Criminal Procedure Code is applicable to the trial of offences under this section A W N. 1896, 136

Fine how to be realised—The procedure should be adopted as laid down in section 386 of the Criminal Procedure Code 1 Weir 711

No seizure—Where the accused drove complainant's cattle to the pound he cannot be convicted under this section 22 C 139.

Effect of verbal irregularity—Where the verbal irregularity is apparent, effect should be given to the spirit of the orders 1 Weir 715.

Suit for damages—In a suit for damages for illegal seizure of cattle the onus lies on the defendant to prove that the seizure was justifiable by law 44 Ind Cas 237

A municipal servant can be prosecuted under this section for illegally seizing a cattle 16 A L J 149=44 Ind Cas 592=19 Cr L J 363

23 The compensation, fines and expenses mentioned in section 22

Recovery of compensation may be recovered as if they were fines imposed by the Magistrate.

Proceedings—The court

CHAPTER VI

PENALTIES

Penalty for forcibly opposing the seizure of cattle or rescuing the same

24 Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both

Scope — A conviction under this section can only be supported if the cattle were liable to be seized under the Act. If not the rescue is no offence. 27 Cr L J 313 = 9 Ind Cas 697—A I R 1926 All 276 1 P L T 176 57 Ind Cas 464 = 21 Cr L J 640 23 C W N 397 50 Ind Cas 1006 = 20 Cr L J 393 Where the officers of the

seize the cattle in a place where it can be seized owing to a misrepresentation of the accused he cannot seize them when they are in a private compound. Any resistance to such seizure is not an offence under this section. 4 P R 1861 Cr For a conviction under this section there must be a finding as to trespass or damage as contemplated in s 10 43 Ind Cas 445 43 Ind Cas 618—4 Pat L W 40 = 19 Cr L J 202 In order that an offence may be established under s 24 of the Cattle Trespass Act the seizure of the animal must have been liable to seizure and the animal must have been driven across a railway line at a place where there is a likelihood of damage and that no offence under s 24 was committed. 6 Luck 26 = 126 Ind Cas 497—31 Cr L J 1015 = 1930 Cr C 570 A I R 1930 Oudh 250 A person who removes cattle from a

465 21 Cr L J 305

to their true

by slipping the
120—28 Cr L

ung cattle and

* Where complaints are made voluntarily or frivolously on the ground of illegal seizure of cattle compensation may be given to the accused. 1 P R 187 Cr 5 M 381

Trespass is committed by cattle even when they are driven to a private land. Rat Un Cr C 602

An offence under this section is not compoundable. 4 A 202 18 A L J 96 Driving cattle by shouts and cries constitutes rescuing them under this section. 72 Ind Cas 616—21 Cr L J 456 = 1933 M W N 43 17 L W 546

25 Any fine imposed [under the next following section or]* for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were

Recovery of penalty for mischief committed by causing cattle to trespass

* The words with in brackets have been inserted by Act 1 of 1891 s

seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed

26 Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees

Penalty for damage caused to land or crops or public roads by pigs

contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished on conviction before a Magistrate, with fine not exceeding fifty rupees

[The "Provincial Government" * by notification in the "official Gazette," † may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees", or as if there were both such reference and such substitution ‡§]

Scope — There can be no conviction under this section, unless it is proved or can be inferred from the circumstances of the case that the owner has been guilty of neglect Rat Un Cr C 867 see also 21 Bom L R 247

Public road — Public road in section 26 includes a railway also — Vide s 125 (4) of Act 9 of 1890

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished on conviction before a Magistrate, with fine not exceeding fifty rupees

Such fines may be recovered by deductions from the pound-keeper's salary,

Pound keeper — A person who is not himself a pound keeper but is merely entertained by a police patrol who is *ex officio* pound keeper is not a pound keeper 9 B II C A C 164

A pound keeper who has altered a receipt cannot be convicted under this section Rat Un Cr C 632

28 All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate

Application of fines recovered under section 25 26 or 27

may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate

CHAPTER VII.

SUITS FOR COMPENSATION

29 Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court

Saving of right to sue for compensation

other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court

* The words within quotations have been substituted by G. I. Order of 1937. In harmony for these words read Government of Madras Order of 1937.

† In turn

‡ The list

§ Certain

30 Any compensation paid to such person under this Act by
Set off order of the convicting Magistrate shall be
by or awarded to him as compensation in such suit set-off and deducted from any sum claimed

CHAPTER VIII *

SUPPLEMENTAL

Power for 'Provincial Govern-
ment' † to transfer certain func-
tions to local authority and
direct credit of surplus receipts
to local fund

31 The 'Provincial Government' †
may, from time to time, by notification in
the 'official Gazette', ‡

(a) transfer to any local authority within any part of [the territories under its administration] § in which this Act is in operation, all or any of the functions of the 'Provincial Government' † or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority. ||

[SCHEDULE — Repealed by Act I of 1938] *

THE CHILD MARRIAGE RESTRAINT ACT (XIX OF 1929)

CONTENTS

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4 Punishment for male adult above twenty one years of age marrying a child	9 Mode of taking cognizance of offences
5 Punishment for solemnising a child marriage	10 Preliminary inquiries into offences under this Act
6 Punishment for parent or guardian	11 Powers to take security from complainant
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* Ch VIII was added by the Cattle Trespass Act (1871) Amendment Act 1891 (1 of 1891) s 9

† The words within quotations have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' (vide G B Order of 1937)

‡ In Burma for these words read the word 'Gazette' (vide G B Order of 1937)

§ In Burma for the words within brackets read 'British Burma' — vide G B Order of 1937

|| In British India the following words after it have been omitted 'or
(b) direct that the whole or any part of the surplus accruing in any district under
' or funds as may be
in Burma read these

1938 In Burma the following schedule is in force —

(See section 2)

Number and year	Title of Act
III of 1857	An Act relating to trespasses by cattle
V of 1860	An Act to amend Act III of 1857 (relating to trespasses by cattle)
XXII of 1861	An Act to amend Act III of 1857 (relating to trespasses by cattle)

THE CHILD MARRIAGE RESTRAINT ACT, 1929

ACT NO XIX OF 1929

(Received the assent of the Governor General on the 1st October, 1929)

An Act to restrain the solemnisation of child marriages

WHEREAS it is expedient to restrain the solemnisation of child marriages, It is hereby enacted as follows —

Short title extent and com- 1 (1) This Act may be called the Child
mencement Marriage Restraint Act, "1929 *

[(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas and applies to—

(a) all British subjects and servants of the Crown in any part of India and

(b) all British subjects who are domiciled in any part of India wherever they may be †††

(3) It shall come into force on the first day of April, 1930

... of boys
removing
jects and
marriage
is not
penalties
92=A I
309 158
Marriage
o sanction
purpose of

... has clearly expressed its disapproval
A I R 1937 Cal 257 This Act is applic
committed in British India 39 C W

Definitions

2 In this Act, unless there is any-
thing repugnant in the subject or con-
text,—

(a) "child means a person who if a male, is under eighteen years of age, and if a female, is under fourteen years of age,

(b) "child marriage" means a marriage to which either of the contracting parties is a child,

(c) "child marriage" means a marriage to which either of the parties be]§ thereby solemnised, and
n of e ther sex who is under eighteen
years of age

Notes —We considered a suggestion that the minimum age to determine whether a
be reduced to 11 and another
nmittee however were emphati
object of the Bill —I report of the

See also ...

Punishment for male adult below twenty one years of age marrying a child.

3 Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees

Notes—The object of the Bill as introduced in the Legislature was to impose restraint upon the solemnisation of child marriages, and the method adopted was, broadly speaking, that of declaring all marriages of boys and girls below a certain age to be invalid. The Bill has been circulated under the orders of Government and has elicited a strong expression of feeling that it is objectionable, both on religious and on legal grounds, to interfere with the valid marriages of children at present widely in practice.

before marriage A. I. R. 1932 Cal 719=137 Ind Cas 425.

4. Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Notes—Vide notes under section 3.

Punishment—The extent of the punishment to be awarded at simple imprisonment is a matter for the consideration of the Select Committee. A woman who marries a young boy, as cases of this sort are rare, and in most of these the woman is likely to be so young that she is entirely under the control of her parents and should not be made criminally liable. Further even in such marriages the new Act will not be inoperative, as the other contracting party will be a child, and the guardian of the child and the persons who solemnise the marriage will be punishable.

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and we considered it inexpedient that these boys should be sent to jail for undertaking a course of action in which they may not have been entirely free agents. We decided therefore, that where a boy between the ages of eighteen and twenty one marries a child he shall be liable to fine, and that where a man above the age of twenty one marries a child he shall incur the full penalty prescribed for offences under the Act. We have, therefore, provided separately in clause 3 for a fine of Rs 1,000 for offenders above the age of eighteen years and under twenty one and in clause 7 we have made provision that imprisonment shall not be imposed on these offenders under any circumstances. Clause 4 relates to offenders above the age of twenty one. The next point which we decided was the extent of the punishment to be provided generally for offences under the Act and this we have fixed at simple imprisonment up to one month and fine up to one thousand rupees, or both."

Report of the Select Committee

5 Whoever performs, conducts or directs any child marriage, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Notes—This section excludes betrothal ceremony which is a necessary preliminary to a marriage but which does not constitute a marriage without further ceremony. This sec-

tion only penalises the persons who actually officiate in that part of the ceremony which finally renders the marriage tie indissoluble. This section also exempts any person who has officiated at a child marriage but who can prove to the satisfaction of the court that he has taken all reasonable precautions to satisfy himself that the minimum age—*Report of the Select Committee*, Cr. L J 1483. This section excludes bridegroom. L J 311=28 N L R 302, see also 38 Cr L M W N 212=45 L W 437=A I R 1937 Mad 490. Trial under the Act must be summary. A I R 1934 All 331. A *purohit* prosecuted under s 5 has the burden on him to prove that he had reason to believe that neither of the parties to the marriage was a child. 163 Ind Cas 723=38 Cr L J 591=A I R 1937 Mad 490=1937 M W. N 212. Marriage conducted on certificate of person having less qualification than Civil Surgeon does not amount to good faith. But existence of such certificate affects sentence. *Ibid*. Sentence on priest or other celebrant should be deterrent. A I R 1933 Pat 471=14 P L T 433=1933 Cr. C 1027. The mere submission of an application to the Municipal Board

6 (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permit it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Provided that no woman shall be punishable with imprisonment

(2) For the purpose of this section until the contrary is proved, that when a marriage, the person having charge of to prevent the marriage from being solemnised

Notes—We have provided that the punishment of imprisonment shall not be inflicted in the case of a female parent or guardian and we rejected a proposal for the omission of the presumption contained in the second part of this clause, as we consider the presumption reasonable in itself and necessary to enable the provisions of the clause to have their proper effect.—*Statement of Objects and Reasons*. Father giving

Act is confined only to the person who has actual charge of the minor either as parent or guardian. L R 302=32 Cr L J 311=A I R 1937 Mad 490=1937 M W. N 212. Trial under the Act must be summary. A I R 1934 All 331. A *purohit* prosecuted under s 5 has the burden on him to prove that he had reason to believe that neither of the parties to the marriage was a child. 163 Ind Cas 723=38 Cr L J 591=A I R 1937 Mad 490=1937 M W. N 212. Marriage conducted on certificate of person having less qualification than Civil Surgeon does not amount to good faith. But existence of such certificate affects sentence. *Ibid*. Sentence on priest or other celebrant should be deterrent. A I R 1933 Pat 471=14 P L T 433=1933 Cr. C 1027. The mere submission of an application to the Municipal Board

7. Notwithstanding anything contained in [section 25 of the General Clause Act, 1897,*]† or section 64 of the Indian Penal Code,‡ a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment

Imprisonment not to be awarded for offences under section 3

Notes — We have, therefore, provided separately in clause 3 for a fine of Rs 1 000 for offenders above the age of fifteen years and under twenty one and in clause 7 we have made provision that imprisonment shall not be imposed on these offenders under any circumstances. Clause 4 relates to offenders above the age of twenty one years. — *Report of the Select Committee*

8 Notwithstanding - - - - - of the Code no Court Magistrate, or]† [a Magistrate of the first class]|| shall take cognizance of, or try, any offence under this Act

Notes — We have added to them certain provisions of procedure which are designed to avoid risk of frivolous prosecutions and harassment. We consider these provisions to be very important safeguards in a measure of social reform directed against a custom so long established and so widely prevalent as that of child marriage. It may be that in future these provisions of the Act allowed to operate in the at least, we are strongly of opinion that policy we have provided in clause 8 that District Magistrates shall have jurisdiction in of the Select Committee see also 169 Ind Cas I R 1937 Mad 637. But now such offence class

[9 No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed]¶

Mode of taking cognizance of offences

Notes — In order to avoid the risk of frivolous prosecutions and harassment provision has been made that cognizance can be taken only upon complaint made within one year of the offence. — *Report of the Select Committee*

10 The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898§ either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make such inquiry

Preliminary inquiries into offences under this Act

Notes — In clause 10 we have laid down that the Court unless it dismisses the complaint shall in all cases make a preliminary inquiry under section 202 of the Code of Criminal Procedure 1898. — *Report of the Select Committee*. Preliminary enquiry is necessary before issue of summonses. A I R 1934 Lah 155 see also 31 P L R 945 = 32 Cr L J 616 12 Lah 383 = A I R 1931 Lah 56. Failure to record reasons for not requiring complainant to execute bond is material irregularity and is not curable by Cr P

* X of 1897

† The words within brackets have been omitted in Burma by G. B. Order of 1937

‡ XLV of 1860

§ V of 1898

|| The words within brackets have been substituted by Act 19 of 1935. In Burma for

THE INDIAN CHRISTIAN MARRIAGE ACT (XV OF 1872.)

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THE INDIAN CHRISTIAN MARRIAGE ACT 1872

ACT NO XV OF 1872*

(Received the G. G.'s assent on the 18th July, 1872)

An Act to consolidate and amend the law relating to the solemnization in
 Indian of the marriages of Christians

WHEREAS it is expedient to consolidate and amend the law relating
 to the solemnization in India of the marriages of persons professing the Christian
 Preamble religion It is hereby enacted as follows —

PRELIMINARY

Short title 1 [This Act may be called the
 Indian Christian Marriage Act, 1872

It extends to the whole of British India and so far only as regards
 Christian subjects of Her Majesty, to
 Extent 'Indian States' †]†

* Act XV of 1872 has been declared under the Scheduled Districts Act (XIV of 1814)

1881 Pt I, p 501

(III of 1872) s 3 as
 Reg I of 1916 s 3
 4 and in British

ted by G I Order

• In Burma for section 1 read the following section 1 —

1 This Act may be called the Christian Marriage Act It extends to the whole of
 British Burma and applies also to Christian British subjects in the territories of the Chief
 of Karcuni

[2 *Enactments repealed.*—(*Repealed by Act I of 1938*)]*

Interpretation clause 3. In this Act, unless there is something repugnant in the subject or context—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established ;

"Church of Scotland" means the Church of Scotland as by law established ,

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head ;

"Church" includes any chapel or other building generally used for public Christian worship ,

"minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow ;†

the expression "Christians" means persons professing the Christian religion ,

and the expression "Native Christians" includes the Christian descendants of [Natives of India]‡ converted to Christianity, as well as such converts ,

["Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886]§

Notes —The mere fact that a person was bap

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

4. Every marriage between persons, one or both of whom is "or are"|| a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section , and any such marriage solemnized otherwise than in accordance with such provisions shall be void

* In British India section 2 has been omitted by Act I of 1938 In Burma read the following section 2 —

repealed, but not by such enactment issued, and other respectively made,

substituted —
"xxiv, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48"

† The definition of "Native States" after this has been omitted by G. I. Order of 1937 and G. B. Order of 1937 respectively

‡ In Burma for the words "Natives of India" read "Natives of India and Burma."— Vide G. B. Order of 1937.

§ This paragraph was added by the Births, Deaths and Marriages Registration Act (VI of 1886), s. 30, cl (a).

|| In s. 4 the words quoted have been inserted by Act XII of 1891, Sch II.

Notes — A mixed marriage celebrated by the Catholic Church otherwise valid is not invalid for want of banns A I R 1931 All 273=56 A 428=1931 A L J 1129 As

590

Persons by whom marriages may be solemnized

5. Marriages may be solemnized in [India]—*

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister,

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland,

(3) by any Minister of Religion licensed under this Act to solemnize marriages,

(4) by, or in the persence of, a Marriage Registrar appointed under this Act,

(5) by any person licenced under this Act to grant certificates of marriage between Native Christians

†[6 The "Provincial Government,"‡ so far as regards the territories under its administration, and the Grant and revocation of licences to solemnize marriage 'Central Government,'‡ so far as regards any "Indian State"§ may, by notification in the "official Gazette,"|| grant licences to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licences]†

7. The 'Provincial Government' ‡ may appoint one or more Marriage Registrars Christians either by name, or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district [subject to its administration **]††

Where there are more Marriage Registrars than one in any district, the "Provincial Government"‡ shall appoint one of them to be the Senior Marriage Registrar

* In Burma read 'Burma' for the word "India", (vide G B Order of 1937)

been substituted for the Burma for these words read

these read 'the territories

1 'Gazette' — vide G B

††6 The Governor may, by notification, grant licences to Ministers of revoke such l

'03, *Litish* 7

. by G B .

Notes—A mixed marriage celebrated by the Catholic Church otherwise valid is not invalid for want of banns. A I R 1934 All 278=56 A 428-1934 A L J 1199. As

590

Persons by whom marriages may be solemnized

5 Marriages may be solemnized in [India]—*

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland,

(3) by any Minister of Religion licensed under this Act to solemnize marriages,

(4) by, or in the persence of, a Marriage Registrar appointed under this Act,

(5) by any person licenced under this Act to grant certificates of marriage between Native Christians

of the

†[6 The "Provincial Government,"† so far as regards the territories under its administration, and the 'Central Government,'† so far as regards any "Indian State,"§ may, by notification grant licences to Ministers of Religion to solemnize marriages, respectively, and may, by a

7. Thoint one or more Christians either by name, or as holding any office for the time being, to be the

Marriage Registrar or Marriage Registrars for any district [subject to its administration **]††

Where there are more Marriage Registrars than one in any district, the Provincial Government'† shall appoint one of them to be the Senior Marriage Registrar

* In Burma read Burma for the word India' (vide G B Order of 1937)

have been substituted for the In Burma for these words read

not for these read the territories

read Gazette'—vide G B

Order of 1937

to Ministers of Religion to revoke such licenses

03, British Burma Gazette,

June 25 1910, 1 1937

†† The words within brackets have been omitted in Burma by G B Order of 1937

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district or ill or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy

8 The [Central Government]† may, by notification in the [official Gazette,]† appoint any Christian Marriage Registrars in [Indian States]* either by name or as holding any office for the time being to be a Marriage Registrar in respect of any district or place within [the Indian States]*

The [Central Government]† may, by like notification, revoke any such appointment

9 [The Central Government † or (so far as regards any 'Indian State*) the Provincial Government † Licensing of persons to grant certificates of marriage between Indian Christians §] may grant a license to any Christian either by name or as holding any office for the time being authorizing him to grant certificates of marriage between [Indian Christians]§

Any such licence may be revoked by [the authority by which it was granted]† and every such grant or revocation shall be notified in the [official Gazette]†

PART II

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

10 Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening

Exceptions Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special licence permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the Diocese or his Commissary or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special licence in that behalf from

* The words within brackets have been substituted by G. I. Order of 1937 In British India of Karacnni —Vide

of 1937 In British

of 1937 In British
substituted by G. I. Order

the Governor —Vide

the Roman Catholic Bishop of the Diocese or Vicariate in which such
uch person as the same Bishop has

of Scotland solemnizing a marriage
according to the rules, rites ceremonies and customs of the Church
of Scotland]*

11 No Clergyman of the Church of England shall solemnize a
Place for solemnizing marriage marriage in any place other than a Church
where worship is generally held according
to the forms of the Church of England †

unless there is no "such † Church within five miles distance by the
shortest road from such place or

unless he has received a special license authorizing him to do so
under the hand and seal of the Anglican Bishop of the Diocese or his
Commissary

For such special licence, the Registrar of the Diocese may charge
Fee for special license such additional fee as the said Bishop from
time to time authorizes

PART III

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12 Whenever a marriage is intended to be solemnized by a
Notice of intended marriage Minister of Religion licensed to solemnize
marriages under this Act—

one of the persons intending marriage shall give notice in writ-
ing, according to the form contained in the first schedule hereto
annexed, or to the like effect, to the Minister of Religion whom he
or she desires to solemnize the marriage, and shall state therein—

(a) the name and surname, and the profession or condition, of
each of the persons intending marriage,

(b) the dwelling-place of each of them

(c) the time during which each has dwelt there, and

(d) the Church or private dwelling in which the marriage is to
be solemnized

Provided that, if either of such persons has dwelt in the place men-
tioned in the notice during more than one month, it may be stated
therein that he or she has dwelt there one month and upwards

13 If the persons intending marriage desire it to be solemnized
Publication of such notice in a particular Church, and if the Minister
of Religion to whom such notice has been
delivered be entitled to officiate therein he shall cause the notice to
be affixed in some conspicuous part of such Church

But if he is not entitled to officiate as a Minister in such Church,
Return or transfer of notice he shall, at his option either return the
notice to the person who delivered it to

* In s 10 this portion was added by Act II of 1891 s 2

† In s 11 the words quoted and the word such have been inserted by Act
1891 s 3

him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid

14 If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district who shall affix the same to some conspicuous place in his own office

15 When one of the persons intending marriage is a minor,* every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or if there be more than one Registrar of such district, to the Senior Marriage Registrar

16 The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed

17 Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made

Proviso

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister,

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter† mentioned, by any person authorized in that behalf

18 The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law ‡ has or have

* See Act IX of 1875

† See s 20

‡ See s 19

been obtained thereto, or that there is no person resident in [India]* having authority to give such consent as the case may be

19 The father, if living of any minor, or, if the father be dead
 Consent of father or guardian the guardian of the person of such minor,
 or mother and, in case there be no such guardian,
 then the mother of such minor may give
 consent to the minor's marriage

and such consent is hereby required for the same marriage unless no person authorized to give such consent be resident in [India]*

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Marriage Act
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20 Every person whose consent to a marriage is required under
 Power to prohibit by notice section 19 is hereby authorized to prohibit
 issue of certificate the issue of the certificate by any Minister,
 at any time before the issue of the same
 by notice in writing to such Minister, subscribed by the person so
 authorized with his or her name and place of abode and position with
 respect to either of the persons intending marriage, by reason of which
 he or she is so authorized as aforesaid

21 If any such notice be received by such Minister, he shall not
 Procedure on receipt of notice issue his certificate and shall not solemnize
 the said marriage until he has examined
 into the matter of the said prohibition, and is satisfied that the person
 prohibiting the marriage has no lawful authority for such prohibition
 or until the said notice is withdrawn by the person who gave it

22 When either of the persons intending marriage is a minor,
 Issue of certificate in case of and the Minister is not satisfied that the
 minority consent of the person whose consent to
 such marriage is required by section 19
 has been obtained, such Minister shall not issue such certificate until
 the expiration of fourteen days after the receipt by him of the notice
 of marriage

23 When any Native Christian about to be married takes a
 Issue of certificates to Native notice of marriage to a Minister of Religion or applies for a certificate from such
 Christians Minister under section 17, such Minister
 shall issue such certificate to such Native
 notice or
 or cause to
 be translated into
 some language which he understands

24 The certificate to be issued by such Minister shall be in the
 Form of certificate form contained in the second schedule
 hereto annexed, or to the like effect

* In Burma for the word India read Burma (vide C. P. Order of 1937)

him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid

14 If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district who shall affix the same to some conspicuous place in his own office

15 When one of the persons intending marriage is a minor,* every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13 send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or if there be more than one Registrar of such district, to the Senior Marriage Registrar

16 The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district who shall likewise publish the same in the manner above directed

17 Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required issue under his hand a certificate of such notice having been given and of such declaration having been made

Proviso

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister,

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter† mentioned, by any person authorized in that behalf

18 The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance, to the said marriage, and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law ‡ has or have

* See Act IV of 1875

† See s 20

‡ See s 19

been obtained thereto, or that there is no person resident in [India]* having authority to give such consent as the case may be

19 The father, if living of any minor, or, if the father be dead
Consent of father or guardian or mother the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage unless no person authorized to give such consent be resident in [India]*

* Marriage Act
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20 Every person whose consent to a marriage is required under
Power to prohibit by notice issue of certificate section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid

21 If any such notice be received by such Minister, he shall not
Procedure on receipt of notice issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition or until the said notice is withdrawn by the person who gave it

22 When either of the persons intending marriage is a minor,
Issue of certificate in case of minority and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage

23 When any Native Christian about to be married takes a
Issue of certificates to Native Christians notice of marriage to a Minister of Religion or applies for a certificate from such Minister under section 17, such Minister shall before issuing the certificate ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate as the case may be and if not shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands

24 The certificate to be issued by such Minister shall be in the
Form of certificate form contained in the second schedule hereto annexed, or to the like effect

* In Burma for the word India read Burma (Rule C P Order of 197)

25 After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister

26 Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid

PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

27 All marriages hereafter solemnized in [India]* between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act shall be registered in manner hereinafter prescribed

28 Every Clergyman of the Church of England shall keep a register of marriages and shall register therein according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act

29 Every Clergyman of the Church of England shall send four times in every year returns in duplicate authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty first day of March from the first day of April to the thirtieth day of June from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively and shall be sent by such Clergyman within two the quarters above specified the said returns shall send one general of Births, Deaths and

Marrriages †

* In Burma for the word 'Ind' read 'Burma' (vide G B Order of 1937)

† The words quoted were substituted for the words 'Secretary to the Local Government by Act (VI of 1896) s 30 cl (b) As to the establishment of general registry office of Births Deaths and Marriages see Act (VI of 1896) Chap II

30 Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized

Registration and returns of marriages solemnized by Clergy men of Church of Rome

is solemnized

and such person shall forward quarterly to the "Registrar General of Births, Deaths and Marriages" * returns of the entries of all marriages registered by him during the three months next preceding

31 Every Clergyman of the Church of Scotland shall keep a register of marriages

Registration and returns of marriages solemnized by Clergy men of Church of Scotland

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed every marriage which he solemnizes under this Act

and shall forward quarterly to the "Registrar General of Births Deaths and Marriages" * through the Senior Chaplain of the Church of Scotland returns similar to those prescribed in section 29, of all such marriages

32 Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages shall, immediately after the solemnization thereof be registered in duplicate by the person solemnizing the same, (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed and also in a certificate attached to the marriage-register-book as a counterfoil

Certain marriages to be registered in duplicate

33 The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage and also by the persons married and shall be attested by two credible witnesses, other than the person solemnizing the marriage present at its solemnization

Entries of such marriages to be signed and attested

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book

34 The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized or if there be more Marriage Registrars than one, to the Senior Marriage Registrar

Certificate to be forwarded to Marriage Registrar copied and sent to Registrar General

who shall cause such certificate to be copied into a book to be kept by him for that purpose

and shall send all the certificates which he has received during

* The words quoted were substituted for the words "Secretary to the Local Government" by Act (VI of 1906) s 30 cl (b)

month, with such number and signature or initials added thereto as are hereinafter required to the 'Registrar General of Births, Deaths and Marriages *

35 Such copies shall be entered in order from the beginning to the end of the said book and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book according to the order in which he receives each certificate

36 The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall at the end of every month, send the same to the 'Registrar General of Births Deaths and Marriages **

37 When any marriage between Native Christians is solemnized 'by any such person Clergyman or Minister of Religion as is referred to the clause (1), clause (2) or clause (3) of section 5 † the person solemnizing the same shall instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book and shall keep it safely until it is filled or if he leave the district in which he solemnized the marriage before the said book is filled shall make over the same to the person succeeding to his duties in the said district

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the senior Marriage Registrar, who shall send it to the Registrar General of Births Deaths and Marriages, * to be kept by him with the records of his office

PART V

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

38 When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed or to the like effect to any Marriage Registrar of the District within which the parties have dwelt

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

* The words quoted were substituted for the words Secretary to the Local Government by Act (VI of 1886) s 30 cl (b)

† Substituted by Act VII of 1928

and shall state therein the name and surname and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them the time during which each has dwelt therein and the place at which the marriage is to be solemnized

Provided that if either party has dwelt in the place stated in the notice for more than one month it may be stated therein that he or she has dwelt there one month and upwards

Notes—This section governs the schedule and the space left for age is not necessary to be filled with that particular because no such provision is made in the sect on 158 Ind Cas 791-39 C W N 1303 36 Cr L J 1462=A I R 1935 Cal 678

39 Every Marriage Registrar shall, on receiving any such notice cause a copy thereof to be affixed in some conspicuous place in his office

Publication of notice

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty four hours after the receipt by him of the notice of such marriage, send by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district who shall likewise affix the copy in some conspicuous place in his own office

40 The Marriage Registrar shall file all such notices and keep them with the records of his office,

Notice to be filed and copy entered in Marriage Notice Book

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the [Provincial Government]* and to be called the Marriage Notice Book

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

41 If the party by whom the notice was given requests the Marriage Registrar to issue the certificate

Certificate of notice given and oath made

oath as hereinafter required his hand a certificate of such notice having been given and of such oath having been made

Proviso

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue

that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorised in that behalf by this Act

that four days after the receipt of the notice have expired, and further

that where by such oath, it appears that one of the parties intending marriage is a minor fourteen days after the entry of such notice have expired

* The words with in brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor (in the G B Order of 193)

month, with such number and signature or initials added thereto as are hereinafter required, to the "Registrar General of Births, Deaths and Marriages" *

35 Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate

Copies of certificates to be entered and numbered

36 The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the "Registrar General of Births, Deaths and Marriages" **

Registrar to add number of entry to certificate and send to Registrar General

37 When any marriage between Native Christians is solemnized by any such person, Clergyman or Minister of Religion as is referred to the clause (1), clause (2) or clause (3) of section 5 † the person solemnizing the same shall, instead of proceeding in the manner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district

Registration of marriages between Native Christians by any such person Clergyman or Minister of Religion as is referred to in cl (1) (2) or (3) of s 5 Custody and disposal of register book

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the District, or, if there be more Marriage Registrars than one, to the senior Marriage Registrar, who shall send it to the 'Registrar General of Births Deaths and Marriages,' * to be kept by him with the records of his office

PART V

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

38 When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt, or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

Notice of intended marriage before Marriage Registrar

* The words quoted were substituted for the words Secretary to the Local Government by Act (VI of 1886) s 30 cl (b)

† Substituted by Act VII of 1928

and shall state therein the name and surname and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them the time during which each has dwelt therein, and the place at which the marriage is to be solemnized

Provided that, if either party has dwelt in the place stated in the notice for more than one month it may be stated therein that he or she has dwelt there one month and upwards

Notes—This section governs the schedule and the space left for age is not necessary to be filled with that particular because no such provision is made in the section 158 Ind Cas 791=39 C W N 1303=35 Cr L J 1462=A I R 1935 Cal 678

39 Every Marriage Registrar shall, on receiving any such notice
 Publication of notice cause a copy thereof to be affixed in some conspicuous place in his office

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty four hours after the receipt by him of the notice of such marriage, send by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office

40 The Marriage Registrar shall
 Notice to be filed and copy entered in Marriage Notice Book file all such notices and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the [Provincial Government]* and to be called the Marriage Notice Book

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same

41 If the party by whom the notice was given requests the Marriage Registrar to issue the certificate
 Certificate of notice given and oath made next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made

Proviso

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue

that the issue of such certificate has not been forbidden in manner hereinafter mentioned by any person authorised in that behalf by this Act

that four days after the receipt of the notice have expired, and further

that where by such oath, it appears that one of the parties intending marriage is a minor fourteen days after the entry of such notice have expired

* The words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor (in the G B Order of 1937)

42 The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath*—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in [India]† authorised to give such consent, as the case may be

[43] When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41

And, on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith ‡

44 The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor,

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word 'forbidden' opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satis-

* See the General Clauses Act 1897 (N. of 1897) s 3 cl (36) and s 4

† In Burma for the word India read Burma (vide G. B. Order of 1937.)

‡ Section 43 has been omitted in Burma by G. B. Order of 1937.

fied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it

Petition where person whose consent is necessary is insane

45 If any person whose consent is necessary to any marriage under this Part is of unsound mind

or unjustly withholds consent

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, [where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then]* to the District Judge :

And the [said Judge of the High Court or]* District Judge, as the case may be may examine the allegations of the petition in a summary way ,

and, if upon examination, such marriage appears proper, such [Judge of the High Court or]* District Judge [as the case may be]* shall declare the marriage to be a proper marriage

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage ,

and if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden

46 Whenever a Marriage Registrar refuses to issue a certificate

Petition when Marriage Registrar refuses certificate

under this Part either of the parties intending marriage may apply by petition, [where the district of such Registrar is

within any of the towns of Calcutta Madras and Bombay, to a Judge of the High Court or if such district is not within any of the said towns then]* to the District Judge

The said [Judge of the High Court, or]* District Judge, [as the case may be]* may examine the allegations of the petition in a summary way, and shall decide thereon

The decision of such Judge of the High Court or District Judge, as the case may be shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith

47 Whenever a Marriage Registrar resident in [any "Indian" †

Petition when Marriage Registrar in [Indian † State]; refuses certificate

State]‡ refuses to issue his certificate, either of the parties intending marriage may apply by petition to the [Central Government]§ who shall decide thereon

* In British Burma the words within brackets have been omitted by G B Order of 1937

† Substituted in British India by C I Order of 1937

‡ In British Burma for the words within brackets read the word Karenna (vide C B Order of 1937)

§ The words within brackets have been substituted by G I Order of 1937 In read the word Governor for the words within brackets (vide G B Order of 1937)

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith

48 Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorised by law so to do, the said Marriage Registrar shall apply by petition [where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then]* to the District Judge

Petition when Registrar doubts authority of person forbidding

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and [the said Judge of the High Court, or]* District Judge, [as the case may be,]* shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden

Whenever a Marriage Registrar appointed under section 8 to act within [any 'Indian'† State]‡ is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the 'Central Government'§

Reference when Marriage Registrar [Indian † State], doubts authority of person forbidding

If it appears to the "Central Government"§ that the person forbidding the issue of such certificate is not authorized by law so to do, the "Central Government"§ shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden

49 Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate on grounds which such Marriage Registrar under section 44 or a Judge of the High Court or the District Judge, under section 45 or 46, declares

Liability for frivolous protest against issue of certificate

* The words within brackets have been omitted in British Burma by G. B. Order of 1937.
† In British India the words within quotations has been substituted by G. I. Order of 1937.

‡ In Burma for the words within brackets read the words 'Karen', (vide G. B. Order of 1937).

§ The words within quotations have been substituted by G. I. Order of 1937. In Burma for these words read 'Governor', (vide G. B. Order of 1937).

to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered

50 The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect, and the [Provincial Government]* shall furnish to every Marriage Registrar a sufficient number of forms of certificate

51 After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificate of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect —

"I do solemnly declare that I know not of any lawful impediment why I, *A B*, may not be joined in matrimony to *C D*

And each of the parties shall say to the other as follows or to the like effect — "I call upon these persons here present to witness that I, *A B*, do take thee, *C D*, to be my lawful wedded wife (or husband)"

52 Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate if any, issued thereupon, and all other proceedings thereupon, shall be void

* and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid

53 A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage

54 After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate, that is to say, in a

* The words within brackets have been substituted by G. I. Ord. r. of 1937. In Burma for these words read the word Governor, (vide G. B. Order of 1937)

marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book

55 The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the "Registrar General of Births, Deaths and Marriages"*

Certificate to be sent monthly to Registrar General

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the "Registrar General of Births, Deaths and Marriages,"* to be kept by him with the records of his office

Custody of register-book

56 The Marriage Registrars in [Indian States]† shall send the certificates mentioned in section 54 to such officers as the [Central Government]‡ from time to time by notification in the [official Gazette],§ appoints in this behalf

Officers to whom Registrars in [Indian States]† shall send certificates

57 When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands,

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate

58 When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage

Native Christians to be made to understand declarations

* Substituted by Act VI of 1896

† The words within brackets have been substituted for the words "Native States" by Act VI of 1896

shall at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act

59 The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise

PART VI*

MARRIAGE OF NATIVE CHRISTIANS

60 Every marriage between Native Christians applying for a certificate shall notice required under this Part, if the following conditions be fulfilled, and not otherwise —

On what conditions marriages of Native Christians may be certified

(1) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years,

(2) neither of the persons intending to be married shall have a wife or husband still living

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A B*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C D* to be my lawful wedded wife (or husband)" or words to the like effect :

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorised to give such consent

61 When, in respect to any marriage solemnized under this Part the conditions prescribed in section 60 have been fulfilled the

Grant of certificate

person licensed as aforesaid, in whose presence the said declaration has been made shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed

* As to the validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian and penalty for solemnizing such marriages under Part VI in future see Act II of 1872

marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book

55 The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the "Registrar General of Births, Deaths and Marriages"*

Certificate to be sent monthly
to Registrar General

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the "Registrar General of Births, Deaths and Marriages,"* to be kept by him with the records of his office

Custody of register-book

56 The Marriage Registrars in [Indian States]† shall send the certificates mentioned in section 54 to such officers as the [Central Government]‡ from time to time, by notification in the [official Gazette], § appoints in this behalf

Officers to whom Registrars in
[Indian States]† shall send cer-
tificates

57 When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands,

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate

58 When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage

Native Christians to be made to
understand declarations

* Substituted by Act VI of 1880

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of 1937)
I Order
of 1937)

shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act

59 The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable) and not otherwise

PART VI*

MARRIAGE OF NATIVE CHRISTIANS

60 Every marriage between Native Christians applying for a certificate shall without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise —

(1) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years

(2) neither of the persons intending to be married shall have a wife or husband still living

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A B*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee *C D* to be my lawful wedded wife (or husband)" or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorised to give such consent

61 When, in respect to any marriage solemnized under this Part the conditions prescribed in section 60 have been fulfilled the person licensed as aforesaid, in whose presence the said declaration has been made shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas grant a certificate of the marriage

The certificate shall be signed by such licensed person and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed

* As to the validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian and penalty for solemnizing such marriages under Part VI in future. see Act II of 1892

*[62 (1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the [Provincial Government]† [by which

Keeping of register book and deposit of extracts therefrom with Registrar General

he was licensed]‡ may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages [for the territories under the administration of the said] † [Provincial Government,]‡ in such form and at such intervals as [that Government] § may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals

[(2) Where the person keeping the register-book was licensed as regards a Native State by the Governor General in Council, references in sub-section (1) to the [Provincial Government]† therein mentioned shall be read as references to the [Provincial Government]‡ to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24 sub-section (2), of the Births, Deaths and Marriages Registration Act, 1886]‡

63 Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein

Searches in register book and copies of entries

64 The provisions of sections 62 and 63, as to the form of the register book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section

Books in which marriages of Native Christians under Part I or Part III are registered

37

65 This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics

Part VI not to apply to Roman Catholics

But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No XXV of 1864,|| previous to the twenty-third day of February, 1865

Saving of certain marriages

Burma
in 62)

—1 side

|| Act XXV of 1864 was repealed by Act V of 1865, which was again repealed by this Act (XV of 1872)

PART VII.

PENALTIES

False oath, declaration, notice or certificate for procuring marriage

*[66. Whoever, for the the purpose of procuring a marriage or licence of marriage, intentionally,—

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine]

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code

Forbidding by false personation, issue of certificate by Marriage Registrar

†[68. Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

Solemnizing marriage without due authority

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*),†

and shall also be liable to fine].

Notes.—There is no express prohibition preventing a person professing Christianity from doing violence to his faith and marrying a non Christian by a non Christian ceremony. This section does not make it penal for a professing Christian to marry by a ceremony which is void under s 4 40 A 393=16 A L J 414—19 Cr L J 615=45 Ind Cas 519. But where marriage between Hindu and Christian is performed by Hindu, an offence under this section is committed 40 M 1030=33 M L J 118=41 Ind Cas 664

69. Whoever knowingly and wilfully solemnizes a marriage

Solemnizing marriage out of proper time, or without witnesses between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

This section does not apply to

Saving of marriages solemnized under special licence
licences
the Dio
nor to
marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special licence in that behalf mentioned in section 10.

[Nor does this section apply to] by a Clergyman
of the Church of Scotland , ceremonies and
customs of the Church of

70 Any Minister of Religion licensed to solemnize marriages

Solemnizing without notice or within fourteen days after notice, marriage with minor under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying without publication of notice , 71 A Marriage Registrar under this Act, who commits any of the following offences —

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act ,

[(2) after the expiration of two months after the copy of the notice marrying after expiry of notice , has been entered as required by section 40 in respect of any marriage, solemnizes such marriage]†

(3) solemnizes, without any order of a competent Court authorising solemnizing marriage with him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar ,

* In s 69 the last para has been added by Act II of 1891, s 7.

† In s 71, cl (2) has been substituted by Act II of 1891, s 8

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof, issuing certificate against authorized prohibition.

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine

72 Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of "two"* months after the notice has been entered by him as aforesaid,

Issuing certificate after expiry of notice, or, in case of minor within fourteen days after notice, or against authorized prohibition.

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome) ,

73 Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a licence from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him :

issuing certificate or marrying, without publishing notice, or after expiry of certificate ,

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by

issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice ,

* In s 72 the word 'two' has been substituted for the word 'three' by Act II of 1891, s 8.

the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue.

issuing certificate authorizedly forbidden

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

solemnizing marriage authorizedly forbidden

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine

74 Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term

Unlicensed person granting certificate pretending to be licensed

which may extend to five years, and shall also be liable to fine

"Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees" *

75. Whoever by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

Destroying or falsifying register books

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine

Limitation of prosecutions under Act

76 The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed

PART VIII MISCELLANEOUS

77 Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely —

What matters need not be proved in respect of marriage in accordance with Act

(1) Any statement made in regard to the dwelling of the persons married, or to the consent of any persons whose consent to such marriage is required by law

* This paragraph was added by Act II of 1891, s. 9

- (2) the notice of the marriage
- (3) the certificate or translation thereof
- (4) the time and place at which the marriage has been solemnized
- (5) the registration of the marriage

78 Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction and such person shall make the like marginal entry in the certificate thereof

And every entry made under this section shall be attested by the witnesses in whose presence it was made

And in case such certificate has been already sent to the 'Registrar General of Births Deaths and Marriages' * such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made

79 Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or "Registrar General of Births Deaths and Marriages" * having the custody for the time being of any register of marriages or of any certificate or duplicate or copies of certificate, under this Act

shall on payment of the proper fees, at all reasonable times, allow searches to be made in such register or for such certificate or duplicate or copies and give a copy under his hand of any entry in the same

80 Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered or of the facts purporting to be so certified therein without further proof of such register or certificate or duplicate or of any entry therein, respectively, or of such copy

†**[81** The Registrar General of Births, Deaths and Marriages and the officers appointed under section 56 shall at the end of every quarter in each year, select, from the certificates of marriages

Certificates of certain marriages for Secretary of State

* The words quoted have been substituted by Act VI of 1886 s 30 cl (b)

† Section 81 has been substituted for the old section 81 by Act 13 of 1911 s 2

forwarded to them, respectively during such quarter, the certificates of the marriages of which [the Government by whom he was appointed]* may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by them respectively, to the Secretary of State [for India] †

"Provincial Government" * to prescribe fees 82 Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages ,
issuing "certificates for marriage ‡ by Marriage Registrars, and
registering marriages by the same ,
entering protests against, or prohibitions of, the issue of 'certificates for marriage' ‡ by the said Registrars
searching register-books or certificates, or duplicates of copies thereof

giving copies of entries in the same under sections 63 and 79

The [Provincial Government]* shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases as to it may seem fit

83 The [Provincial Government]* may make rules § in regard to the disposal of the fees mentioned in section 82, the supply of register books, and the preparation and submission of returns of marriages solemnized under this Act ||

†[84 The powers conferred on the [Provincial Government]* by sections 82 and 83 [shall] ** so far as regards [Indian States],** be exercised by the [Central Government]*

85 The [Provincial Government]* may by notification in the [official Gazette] †† declare who shall, in any place to which this Act applies, be deemed to be the District Judge

††[86 [(1) The powers and functions exercisable by the [Central Government]* under sections 6, 8, 9 47, 48 56 and 84 shall so far as regards any [Indian States]** which is within the political charge of [Provincial Govern

193

words of marriage and also for the words marriage certificates by the Repealing and Amending Act (1 of 1903) Sch II Pt II

G I Order of
der of 1937
of 1937

words certf
1872 p 1088

of 1937)

†† In Burma read the word Gazette — vide G B Order of 1937
Substituted in British India by G I Order of 1937

‡ Section 86 has been substituted by Act 39 of 1920

y G I Order of
vide G B Order

ment]* be [exercisable]† by that [Provincial Government]*. The exercise under this section by any [Provincial Government]* of powers and functions under sections 6 8, 9 and 56 shall be by notification in the [official Gazette †]§

(2) The powers and functions exercisable under this Act by the [Central Government]* may be delegated to and exercised by such officers as he may from time to time appoint in this behalf

87 Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State.

88 Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into

Notes—This Act does not deal with objections to validity of marriage Personal law is that applicable to religious community 124 Ind Cas 776

SCHEDULE I

(See sections 12 and 38)

NOTICE OF MARRIAGE

a Minister [or Registrar] of

To

I hereby give you notice that a marriage is intended to be had within three calendar months from the date hereof between me and the other party herein named and described (that is to say) —

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church chapel or place of worship in which the marriage is to be solemnized	District in which the other party resides when the parties dwell in different districts
James Smith	Widower	Carpenter	Of full age	16 Clive Street	23 days	Free Church of Scotland Church Calcutta	
Martha Green	Spinster	Minor		20 Hastings Street	More than a month		

Witness my hand this

day of

seventy two

* Gazette — 1st Feb 1937

§ The words written brackets have been omitted in Burma (vide G B Order of 1937).

SCHEDULE II.

(See sections 24 and 50)

CERTIFICATE OF RECEIPT OF NOTICE

I,

do hereby certify that on the _____ day of _____ notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described delivered under the hand of _____ one of the parties (that is to say) —

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church chapel or place of worship in which the marriage is to be solemnized	District in which the other party resides when the parties dwell in different districts
James Smith	Widower	Carpenter	Of full age	16 Clive Street	23 days	Free Church of Scotland Church, Calcutta	
Martha Green	Spinster		Minor	20 Hastings Street	More than a month		

forty-one] of [The
James Smith)
prohibited by any

Witness my hand this _____ day of _____ seventy two

(Signed)

This certificate will be void unless the marriage is solemnized on or before the _____ day of _____

[The *italics* in the schedule are to be filled up as the case may be and the blank division thereof is only to be filled up when one of the parties lives in another district]

* The words 'or oath' have been inserted by the Repealing and Amending Act (I of 1903), s. 3

† In Burma for the words within brackets read Christian Marriage Act

SCHEDULE III.

(See sections 28 and 31)*

FORM OF REGISTER OF MARRIAGES

Quarterly Returns of Marriages for

The Archdeaconry of { Calcutta
 { Madras
 { Bombay

I.—Registrar of the Archdeaconry of {Calcutta,
Madras, } do hereby certify that the
Bombay, }

annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of $\left\{ \begin{array}{l} \text{Calcutta,} \\ \text{Madras,} \\ \text{Bombay,} \end{array} \right\}$ as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord .

[Signature of Registrar]

Registrar of the Archdeaconry of { Calcutta, }
 { Madras, }
 { Bombay. }

MARRIAGES solemnized at { Allahabad,
Barrackpore,
Bareilly
Calcutta, etc., etc

[illegible]

* In Sch. III for "(See section 28)" the words " (See sections 23 and 31) " have been substituted by Act XII of 1891, Sch. II

SCHEDULE IV

(See sections 32 and 54)

MARRIAGE REGISTER BOOK

Number	WHEN MARRIED			NAMES OF PARTIES		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
				Christian name	Surname					
1	Day	Month	Year							
				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White
Martha Duncan } in the presence of us { John Smith
John Green }

CERTIFICATE OF MARRIAGE

Number	WHEN MARRIED			NAMES OF PARTIES		Age	Condition	Rank or profession	Residence at the time of marriage	Father's name and surname
				Christian name	Surname					
1	Day	Month	Year							
				James	White	26 years	Widower	Carpenter	Agra	William White
				Martha	Duncan	17 years	Spinster		Agra	John Duncan

Married in the

This marriage was solemnized between us { James White
Martha Duncan } in the presence of us { John Smith
John Green }

[SCHEDULE V — (*Repealed by Act I of 1938*)*]

THE CINEMATOGRAPH ACT (II OF 1918)

CONTENTS

Sections

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- 2 Definitions
- 3 Cinematograph exhibitions to be licensed
- 4 Licensing authority
- 5 Restrictions on powers of licensing

Sections

- authority
- 6 Punishment for contravention of this Act and rules made thereunder
- 7 Certification of films
- 8 Power to make rules
9. Power to exempt

THE CINEMATOGRAPH ACT, 1918.

ACT NO. II OF 1918

[Received the assent of the Governor General on the 6th March, 1918]

An Act to make provision for regulating exhibitions by means of Cinematographs

WHEREAS it is expedient to make provision for regulating exhibitions by means of cinematographs, It is hereby enacted as follows —

1 (1) This Act may be called the Cinematograph Act 1918

Short title extent and commencement

* The following Schedule V is in force in British Burma —

SCHEDULE V

(See section 2)

ENACTMENTS REPEALED

Number and year	Title	Extent of repeal
Statute 58 Geo 3 cap 84	An Act to remove Doubts as to the Validity of certain marriages had and solemnized within the British territories in India	The whole
Statute 14 and 15 Vict cap 40	An act for Marriages in India	The whole
Act No V of 1852	An Act for giving effect to the provisions of	So much as has not been repealed
Act No V of 1865	^{as amended} The Indian Marriage Act 1865	The whole Act, except so far as it relates to the Straits Settlements
Act No XXII of 1866	An Act to extend the Indian Marriage Act 1865 to the Hyderabad Assigned Districts and the Cantonments of Secunderabad Trimulgerry and Aurungabad	The whole

[(2) It extends to the whole of British India, including British Baluchistan]*

(3) The 'Provincial Government † may by notification in the Official Gazette ‡ direct that the whole or any of its provisions shall come into force in any Province or part of a Province on such date as may be specified in the notification"§

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—
cinematograph includes any apparatus for the representation of moving pictures or series of pictures,

'place' includes also a house, building, tent or vessel, and

'prescribed' means prescribed by rules made under this Act

3 Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence

4 The authority having power to grant licences under this Act (hereinafter referred to as the "licensing authority") shall be the District Magistrate, or, [in a presidency-town] the Commissioner of Police

Provided that the [Provincial Government]† may by notification in the [Official Gazette]‡ constitute for the whole or any part of [a Province]** such other authority as it may specify in the notification to be the licensing authority for the purposes of this Act

5 (1) The licensing authority shall not grant a licence under this Act, unless it is satisfied that—

(a) the rules made under the Act have been substantially complied with, and

(b) adequate precautions have been taken in the place in respect of which the licence is to be given to provide for the safety of persons attending exhibitions therein

(2) A condition shall be inserted in every licence that the licensee will not exhibit or permit to be exhibited in such place any film other than a film which has been certified as suitable for public exhibition

* In Burma for sub section (2) of section 1 the following sub section (2) has been substituted —

this Act
as shall

by G I

the words
the word

1937

* The words "or in the town of Rangoon" have been omitted after this by G I Order of 1937. But read these words in British Burma

** In Burma for the words "a Province" substitute the words "British Burma" (vide G B Order of 1937)

Order of

bition by "an authority constituted under section 7",* and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto.

(3) Subject to the foregoing provisions of this section, and to the control of the [Provincial Government,]† the licensing authority may grant licences under this Act to such persons as it thinks fit, and on such terms and conditions, and subject to such restrictions as it may determine

6 (1) If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or the rules made thereunder, or of the conditions and restrictions upon, or subject to which, any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues, and his licence (if any) shall be liable to be revoked by the licensing authority

(2) If any person is convicted of an offence punishable under this Act committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to His Majesty

*[7 (1) [Any]‡ [Provincial Government,]† by notification in the [official Gazette,]§ constitute as many authorities as it may think fit for the purposes of examining and certifying films as suitable for public exhibition, and declare the area (hereinafter referred to as the 'local area') within which each such authority shall exercise the powers conferred on it by this Act Where an authority so constituted consists of a Board of two or more persons, not more than one-half of the members thereof shall be persons in the service of 'the Crown' ||

(2) If any such authority after examination considers that a film is suitable for public exhibition, it shall grant a certificate to that effect, and shall cause the film to be exhibited, The certificate of any such authority, be valid throughout the territories in which this Act is in force

(3) (a) If the authority is of opinion that a film is not suitable for public exhibition in the local area, it shall inform the person applying

* Section the words within quotations and section 7 have been substituted by Act 23 of 1919

† In British India the words 'Provincial Government' have been substituted by G. I. side G. B. Order of 1937

‡ side G. B. Order of 1937
been substituted for the words
and for these words read the word

have been substituted by C

(8) The exhibition of a film to which any order or direction under clause (b) of sub-section (3) or sub-section (4) (a), (6) or (7) is for the time being applicable shall in the area to which such order or direction relates be deemed to be a contravention of the condition mentioned in sub-section (2) of section 5]

8 (1) The "Provincial Government" * may make rules for the purpose of carrying into effect the provisions of this Act

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power rules under this section may provide for—

(a) the regulation of cinematograph exhibitions for securing the public safety

(b) the procedure of the authorities constituted for examining and certifying films as suitable for public exhibition, and all matters ancillary thereto, and the fees to be levied by those authorities,

[(b) the appointment of officers subordinate to authorities constituted under section 7 and the regulation of the powers and duties of such officers and]†

(c) any other matter which by this Act is to be prescribed

(3) (Omitted by Act 38 of 1920)

(4) All rules made under this Act shall be published in† the official Gazette" * and on such publication shall have effect as if enacted in this Act.

9 The Provincial Government * may, by order in writing exempt subject to such conditions and

Power to exempt

restrictions as it may impose any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or of any rule made thereunder

THE CONTEMPT OF COURTS ACT (XII OF 1926)

CONTENTS

PREAMBLE

Sections

Sections

1 Short title, extent and commencement

2 Power of superior Courts to punish

contempts of Court

3 Limit of punishment for contempt of Court

* The words "Provincial Government" and "official Gazette" have been substituted in British India by G. I. Order of 1937. In Burma read the words "Governor" for the words "Provincial Government" and "Gazette" for "official Gazette" (vide G. B. Order of 1937).

† Inserted by Act 23 of 1919.

Certain words after this repealed by Act 38 of 1920 have been omitted.

THE CONTEMPT OF COURTS ACT, 1926.

ACT NO XII OF 1926

(Received the assent of the Governor-General on the 8th March, 1926)

An Act to define and limit the powers of certain Courts in punishing contempts of Courts.

[Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts ;

And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of Court ; It is hereby enacted as follows :—]*

Notes —“The several High Courts of Judicature established by Letters Patent are superior Courts of record, and as such they have power to attach and commit for acts amounting to contempt of their own proceedings as contempts of Court, and without

to their
s which
Rao, 21
Karni,

21 B L R 16, have held that they possess their power to protect their subordinate Courts against such contempts. The Calcutta High Court on the other hand, in the matter of *Amrita Bazar Patrika*, 17 C W. N 1285 and the *Legal Remembrancer v. Moti Lal Ghose*, 4 Cal 173 has taken a contrary view. In case in ————— and commit exists, the powers of the Courts superior Courts of record in England. It has n Judicial Commissioners of the Central Province powers either in regard to contempt of their own

2 The condition of the law in India as summarised above has long been regarded as unsatisfactory, and in 1914 a Bill was introduced in the Indian Legislative Council which would have increased the classes of cases of contempts of Courts punishable as offences under the Indian Penal Code, but it was not proceeded with owing to war. The present Bill proposes to declare and amend the law in other lines. Instead of increasing the classes of cases punishable as contempts of Courts after trial by Magistrates, the Bill

and Reasons.

The Act amends the High Court

pts of Court subordinate to it.
O. High Court has power to protect
Pat 172=A. I R. 1937 Pat 201.
of trial. 37 C. W. N. 276=60 C.
to Government signing petition
expression “man in the street has
province” is contempt of Court. 31

* In Burma the preamble has been omitted by G. B. Order of 1937.

Short title, extent and commencement

1. (1) This Act may be called the Contempt of Courts Act, 1926

[(2) It shall extend to the whole of British India

(3) It shall come into force on such date as the 'Central Government,'* by notification in the 'official Gazette,'* appoint]†

†[2 (1) Subject to the provisions of sub-section (3), the High

Power of superior Courts to punish contempts of Court

Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in

accordance with the same procedure and practice, in respect of contempts of Courts subordinate to them as they have and exercise in respect of contempts of themselves

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.]

Notes—A contempt of Court contemplated in this section is a criminal offence and no person can be punished for it unless that offence be proved by legal evidence. *Irre Pollard* L R 21 C 106—5 Moo P C N S 111. A statement resting on information and belief is not legal evidence. *The Queen v The Stranger* L R 6 Q B 352. A man in a criminal proceeding need not deny that which is not legally proved against him. *Ibid*.

This case of *Rex v. Davis* demands close attention in order to see whether it rests on reasoning which can legitimately be applied here. Certain links in that chain of reasoning are evident others perhaps are not so clear.

Next the jurisdiction inherited from the old King's Bench was of a very special

* The words within quotations have been substituted in British India by G. I. Order of 1937

† Sub sections (2) and (3) of the sect on have been omitted in Burma by G. B. Order of 1937

rs and authority,
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misdeemeanour was punishable by indictment or information but when it was a contempt of Court it was also punishable *breve incu* by attachment. When this summary proceeding was first used is in some doubt but the opinion has been expressed that the earliest instances of its use where the contempt was an attack on a Judge not in the face of the Court was in 1720.

The fact that there was one alternative mode of bringing the offender before the Court where the misdemeanour was a contempt of Court was merely a difference of procedure. The subject matter was the same that is to say the prosecution of an offence in the Court of King's Bench.

The helplessness of the inferior Court and its subjection to the superintendence and control of the King's Bench were not the foundation of the jurisdiction but merely the occasion and the reason for its exercise.

Powers of High Courts for contempts of inferior Courts before the passing of this Act—*In the matter of the Mirta Bazar Patri* sud. Those principles of the old common law

Court
expedited and
the superintendence
it would be

Have we then these powers? Has this High Court common law powers that would enable it to punish as an offence on a summary proceeding conduct in relation to a proceeding in a Mofussil Criminal Court and not in the face of that Court such conduct not being an offence under the Indian Penal Code Act XLV of 1860?

Then it was held by His Lordship that neither the Supreme Court nor the Sudder Dewani Adawlat nor the Sudder Nizamat Adawlat had jurisdiction to commit a person for contempt of Court. The Supreme Court has inherited the Supreme Court derived any 21 M L J

832 and *King Emperor v P G Kulkarni*, 21 Bom L R 16

Scope—Every superior Court of Record has power to commit for contempt of themselves 17 C W N 1279. The High Courts are superior Courts of Records and as such have jurisdiction over all Courts over which the High Court has jurisdiction. This section gives jurisdiction to the decision reported in 21 M L J 117. So the rule of law. Sub section (2) gives power to the High Court in regard to their own proceedings. By sub section (3) in lieu of the nature of the offence of contempt on a case which is pending in the High Court comments are such as are likely to 20 Cr L J 595. High Court has jurisdiction of Commissioner's Court 37 C

Party charged cannot be called upon to answer upon which the rule is issued. A I R 1932 by an advocate to a Judge constitutes contempt. 433-1931 A I R 1932. The party charged has no right to be heard either in person or by counsel. 666 T. Punishable by fine or imprisonment or both.

A I R 1934 All 314-35 Cr L J 117. A Court of Record and of subordinate Courts. Nag 46-156 Ind Cas 117. The Crown by the person by which these costs are incurred.

a Court or a Judge That description of that class of contempt is to be taken subject to
(and if
to law
n apply
92=1936
n L R
L J
665 (P C) Only contempts punishable as such under Chapter X Penal Code are
excluded from the purview of the Act 36 C W N 648=33 Cr L J 915=A
I R 1932 Cal 705 Section 2 (2) means that act constituting an offence
against Penal Code may well be punished under Penal Code 12 Pat 172=14
e under
a con
t 1=34
J 967
offence
770=14

1 1 1 000

3 Save as otherwise expressly provided by any law for the time
being in force, a contempt of Court may be
Limit of punishment for contempt of Court punished with simple imprisonment for a
term which may extend to six months or
with fine, which may extend to two thousand rupees or with both
Provided that the accused may be discharged or the punishment
awarded may be remitted on apology being made to the satisfaction of
the Court

"Provided further that notwithstanding anything elsewhere con-
tained in any law no High Court shall impose a sentence in excess
of that specified in this section for any contempt either in respect of
itself or of a Court subordinate to it".

Notes —By this section the unrestricted power of the High Court is limited and the
extent of punishment is defined —*Lide Statement of Objects and Reasons* Where
advocate writes threatening letter to Court it amounts to contempt But punishment can
be remitted under proviso to s 3 on tendering of apology A I R 1934 All 317 see also
A I R 1933 Oudh 118=34 Cr L J 726

THE INDIAN COPYRIGHT ACT (III OF 1914)

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- 1 Short title and extent
- 2 Definitions

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- 3 Application of Copyright Act to British India with adaptations
- 4 Modification of copyright as regards translation of works first published in British India

- 5 Musical works made by resident of or first published in British India
- 6 Importation of copies

CHAPTER III PENALTIES

- 7 Offences in respect of infringing copies
- 8 Possession of plates for purpose of making infringing copies
- 9 Punishment on second conviction
- 10 Power of Court to dispose of infringing

* The second proviso has been added by Act 12 of 1934

Sections

- ing copies or plates for purpose of making infringing copies
 11 Cognizance of offences
 12 Saving in case of infringement by construction of building

CHAPTER IV

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- 13 Courts having civil jurisdiction regarding infringement of copyright

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- 14 Effect of non registration under Act XX of 1847.
 15 Repeals (*Repealed*)

THE FIRST SCHEDULE

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA

THE SECOND SCHEDULE

*Repeal of Enactments**(Repealed)*

THE INDIAN COPYRIGHT ACT, 1914

ACT NO III OF 1914.

(Received the Governor General's assent on the 24th February, 1914)

An Act to modify and add to the provisions of the Copyright Act, 1911

WHEREAS it is expedient to modify and add to the provisions of the Copyright Act, 1911, in its application to British India, It is hereby enacted as follows —

Notes —The question of the amendment of the Indian Copyright Act (XX of 1847) has been considered on several occasions since 1864 on the ground that the Act was incomplete and did not provide among other matters for the prohibition of copyright in photographs

as few restrictions as possible

"An Imperial copyright conference was subsequently convened in 1910 containing representations of the self governing dominions

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'A Draft Bill was approved by the conference and eventually passed into law as the Copyright Act 1911 (1 & 2 Geo V c 460) which came into operation in the United Kingdom on the 1st July, 1912

'The important changes in the Act are —

- (i) the abolition of the formality of the registration of copyright,
- (ii) the extension of the term of copyright from 42 years to one of life and 50 years subject to certain conditions,
- (iii) the extension of the scope of copyright,
- (iv) the substitution of one Act for several on the subject of copyright,

India by proclamation in the *Gazette of India* on 31st October 1912, under section 37 (2) of the Act, the question of modifications or additions being postponed for subsequent

consideration on receipt of the news of the Local Governments. They are in substantial agreement with those of the Government of India who propose by virtue of the powers conferred by section 27 of the Act 1911 to pass the Draft Bill which embodies the modifications in and the addition to the Act which are considered desirable together with certain formal and necessary alterations due to difference between English and Indian administration and procedure.

It will be observed that the changes proposed are as few as possible in view of the desirability of securing that uniformity throughout the Empire which was advocated by the Imperial Copyright Conference of 1910. — *Statement of Objects and Reasons*

Construction — All laws which put a restraint upon human activity and enterprise must be construed in a reasonable and generous spirit. A I R 1931 Lah 777

CHAPTER I

PRELIMINARY

Short title and extent

1 [(1) This Act may be called the Indian Copyright Act, 1914

(2) *It extends to the whole of British India including British Baluchistan, the District of Angul and the Sonthal Parganas*]*

Definitions

2 In this Act, unless there is anything repugnant in the subject or context —

(1) 'the Copyright Act' means the Act of Parliament entitled the Copyright Act, 1911,† and

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act

CHAPTER II

CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT ACT

3 In the application to [British India]‡ of the Copyright Act (a copy of which Act except such of the provisions thereof as are expressly restricted to the United Kingdom is set out in the

Application of Copyright Act to [British India]‡ with adaptations

First Schedule) the following modifications shall be made, namely —

(1) the powers of the Board of Trade under section 3 shall, in the case of works first published in [British India],‡ be exercised by the [Central Government]§

(2) the powers of the Board of Trade under section 19 shall, as regards records, perforated rolls and other contrivances the original plate of which was made in [British India]‡ be exercised by the [Central Government]§, and the confirmation of Parliament shall not be necessary to the exercise of any of these powers,

(3) the references in section 19, sub-section (4) and in section 24, sub-section (1) to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of [British India]‡ in which the dispute occurs,

* In Burma section 1 is substituted by the following section 1 — 1 This Act may be called the Burma Copyright Act

† 1 & 2 Geo V c 46

‡ In the words 'British India' read the words 'British Burma' — *Vide G*

ment' have been substituted by G I word 'Governor' (*vide G B Order*

(4) as regards works the authors whereof were at the time of making of the works resident in [British India,]* and as regards works first published in [British India,]* the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a reference to the Indian Patents and Designs Act, 1911, and the reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section 77 of the Indian Patents and Designs Act, 1911.

(5) as regards works first published in [British India,]* the reference in section 24, sub-section (1), proviso (a), to the London Gazette and two London newspapers shall be construed as a reference to the [Official Gazette]† and two newspapers published in [British India]*, and the reference in proviso (b) of the same sub-section of the same section to the 26th day of July, 1910, shall, as regards works the authors whereof were at the time of the making of the works resident in [British India,]* and as regards works first published in [British India,]* be construed as a reference to the 30th day of October, 1912.

Notes—This contains purely formal modifications necessary for the application of the Act of 1911 to British India.—*Statement of Objects and Reasons* In England before the

copy or copies of such book or books in order to print or reprint the same, shall have the sole right and liberty of printing such book or books for the term of one and twenty years

1812

Copyright whether property—Nothing can with greater propriety be called a man's

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m
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* In Burma for the words 'British India' read the words 'British Burma' (rule G B Order of 1937)

† Substituted in British India by G I Order of 1937 In Burma for the words within quotations read the word 'Gazette', (rule G B Order of 1937)

by the first Copyright Act (8 Anne c 19) composition and his assignee had the sole perpetuity by the common law yet that conferred by the Copyright Act (i.e. 8 Anne Copyright Act the common law right is recognised *Vide Hulton v Lennell* (1907)

2 Ch 441 *Prince Albert v Strange* (1839) 11 Cl & F 453 133 ER 1025

the Act or of any other statutory enactment for the time being in force' Right to copy right in books can be inherited by the author's heirs 43 A 412=19 A L J 180=A I R 1921 All 95=61 Ind Cas 391

4 (1) In the case of works first published in [British India]* copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication

Modification of copyright as regards translation of works first published in [British India]*

of the work

Provided that if within the said period the author, or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section

(2) For the purposes of sub-section (1) the expression 'author' includes the legal representative of a deceased author

Notes—Under sections 13 of the Act of 1911 the term for which copyright subsists in translations is the life of the author and a period of fifty years after his death. The special linguistic conditions of India are so numerous and differs so widely that the conditions which prevail cannot be compared with those in most European countries and vernacular translations from English and from other languages are very common but serve the useful purpose for disseminating knowledge. Therefore that translations of works first published

5 In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the works resident in [British India]* or to musical works first published in [British India]* the term "musical work" shall, save as otherwise expressly provided by the Copyright Act, mean "any combination of melody and harmony, or either of them, which has been reduced to writing"

Musical works made by resident of or first published in [British India]*

Notes—The provisions of section 19 of the Act of 1911 are new and in view of the peculiar conditions of Indian music objections have been urged against the application of this section *in toto* to Indian works. It is pointed out that it is impossible in most cases

* In Burma for the words 'British India' read the words 'British Burma'—F. G B Order of 1937.

musical works and much confusion and undesirable litigation. To make it clear that in order to fall within the definition of 'musical work' music must have been graphically represented. It is proposed to adopt *mutatis mutandis* the definition of the term 'musical work' contained in the English Musical Copyright Act 1902, viz., 'musical work' means any combination of melody and harmony or either of them printed or reduced to writing. —*Statement of Objects and Reasons*

6. (1) Copies made out of [British India]* of any work in which copyright subsists which if made in [British India]* would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer as defined in the Sea Customs Act, 1878 that he is desirous that such copies should not be imported into [British India,]* shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by "the Chief Customs-authority"† in this behalf, may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself, in accordance with these regulations, that the copies are such as are prohibited by this section to be imported

(3) The [Central Government]‡ may, by notification in the [official Gazette],§ make regulations either general or special, respecting the detention and confiscation of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and confiscation, and may, by such regulations, determine the information notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence

(4) Such regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works

(5) The regulations may provide for the informant reimbursing the [Central Government]|| all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in [British India,]* shall be deemed to have been given by the owner to the said Chief Customs officer.

* In Burma for the words 'British India' read the words 'British Burma'—vide G B Order of 1937

† In 1924 substituted by G I Order of 1931 — vide G B Order

‡ In British India the word 'Government' read 'Central Government'—vide G B Order of 1937

§ In Order of 1931 substituted by G I Order of 1931

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act

Notes—Section 18 (1) of the Sea Customs Act 1878 prohibits importation in the case of books alone the copyright whereof subsists in India. In view of the extension of the Act of 1911 to works other than books and the difference in procedure it is proposed to repeal this section and enact the appropriate provisions as the necessary modifications referred to in section 14 (7) of the Act of 1911

CHAPTER III

PENALTIES

Offences in respect of infringing copies.

7 If any person knowingly—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists, or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work, or

(c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(d) by way of trade exhibits in public any infringing copy of any such work, or

(e) imports for sale or hire into [British India]* any infringing copy of any such work,

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction

Penalties—We have substituted the word penalties' for the words 'summary

Sections 7—12—The provisions of section 11 of the Act of 1911 have been in the main adopted. Imprisonment, however will in all cases be simple, and offences will be triable by a Magistrate of the first class only. It is proposed to convert the amount of

Copy—A copy has been defined as that which comes so near the original as to suggest the original to the mind of the spectator. 1928 Cal 359

Infringement of copyright—In deciding whether there is an infringement of copyright in pictures the question is whether the offending pictures are copies of substantial portions of the copyright pictures. A I R 1928 Cal 359=33 C W N 172 Conglomeration of similarities on many points which cannot be mere coincidence points to the defendants having copied from plaintiff's book. 34 C W N 510=51 C L J 243 Every man can take what is useful from the original work, impose, add and give to the public the whole comprising the original work, with the additions and improvements,

* In Burma for the words "British India" read the words "British Burma" G B Order of 1937.

musical works and much confusion and undesirable litigation. To make it clear that in order to fall within the definition of 'musical work' music must have been graphically represented. It is proposed to adopt *mutatis mutandis* the definition of the term 'musical work' contained in the English Musical Copyright Act 1902 in which musical work means any combination of melody and harmony or either of them printed or reduced to writing. —*Statement of Objects and Reasons*

6. (1) Copies made out of [British India]* of any work in which copyright subsists which if made in [British India]* would infringe copyright and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer as defined in the Sea Customs Act, 1878 that he is desirous that such copies should not be imported into [British India]* shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by "the Chief Customs-authority"† section, whether to be complied with these regulations, that the copies are such as are prohibited by this section to be imported

(3) The [Central Government]‡ may, by notification in the [official Gazette,]§ make regulations either general or special, respecting the detention and confiscation of copies the importation of which is prohibited by this section and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations, determine the information notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence

(4) Such regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works

(5) The regulations may provide for the informant reimbursing the [Central Government]|| all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in [British India,]* shall be deemed to have been given by the owner to the said Chief Customs officer

* In Burma for the words British India read the words British Burma —*vide* G B Order of 1937

† The words within quotations have been substituted by Act 4 of 1924

‡ In British India the words Central Government have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' —*vide* G B Order of 1937

§ In British India the words official Gazette have been substituted by G I Order of 1937 In Burma for these words read the word 'Gazette' —*vide* G B Order of 1937

|| In British India the words Central Government have been substituted by G I Order of 1937 In Burma for these words read the word Government —*vide* G B Order of 1937

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act

Notes—Section 18 (a) of the Sex Customs Act 1878 prohibits importation in the case of books alone the copyright whereof subsists in India. In view of the extension of the Act of 1911, to works other than books and the difference in procedure it is proposed to repeal this section and enact the appropriate provisions as the necessary modifications referred to in section 14 (7) of the Act of 1911

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7 If any person knowingly—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists ; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work , or

(c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright , or

(d) by way of trade exhibits in public any infringing copy of any such work ; or

(e) imports for sale or hire into [British India]* any infringing copy of any such work ;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction

Penalties—‘We have substituted the word ‘penalties’ for the words ‘summary remedies in the title of Chapter III in view of the fact that the expression ‘summary trial’ is used in the Code of Criminal Procedure, 1898 to denote a particular procedure in the trial of cases which might not be applicable to cases under this Chapter”—*Report of the Select Committee*

Sections 7—12—‘The provisions of section 11 of the Act of 1911 have been in the main adopted. Imprisonment, however, will in all cases be simple, and offences will be

Copy—A copy has been defined as that which comes so near the original as to suggest the original to the mind of the spectator 1928 Cal 359

* In Burma for the words “British India” read the words “British Burma”—F. G. B. Order of 1937.

in such a case there is no invasion of any right. But a copy much less a servile copy of a work cannot be allowed. A I R 1934 Lih 777. An author or compiler is undoubtedly at liberty to draw upon a common source of information but if he saves himself the trouble and labour requisite for collecting that information by adopting another author's work with colourable variation he infringes the latter's copyright although the latter's work may be based on materials which are common property. An author of a school text book on the same subject as a previous author and for use in the same class having to express the same ideas in the best possible manner suited to his reader, is entitled to use the most suitable words and expressions even though the other author may have used them before so long as he does not in fact intend his book to resemble the other.

author's damage. In cases of it is the general same way the same materials unless

the book is intended to contain incorrect inadequate or incomplete information must necessarily be the same. 61 C L J 573 39 C W N 945. Where the plaintiff asked for damages under s 6 on the footing of the loss sustained and in the alternative under s 7 for the delivery of unsold infringing copies and damages in respect of the infringing copies sold and the Court awarded damages under s 6 and also decreed delivery of the unsold copies held that the plaintiff could not claim damages also. A I R 1931 Cal 233=51 C L J 243=34 C W N 540=126 Ind Cas 197.

Who may be convicted—A person who has in the possession any plate for the purpose of making infringing copies. *Walden Times* v. *Walden* (1894) 1 Q B 566. Under s 7 the accused was being summoned and that the accused did not know under what clause of s 7 he was going to be tried. *Held*, that the accused had not had a fair trial. A I R 1934 Pat 522=152 Ind Cas 248.

right was committed. The court does not find in *Walden v. Walden* (1894) 2 Ch 566 under s 7 acquitted the view of the position as held in the *Walden* case. A I R 1927

8 If any person knowingly makes or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

9 If any person, after having been previously convicted of an offence punishable under section 7 or section 8, is subsequently convicted of an offence punishable under either of these sections he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees or with both.

10 (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or otherwise disposed of.

be infringing copies or plates for the purpose of making infringing copies be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit

(2) Any person affected by an order under sub section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

Notes—So far as the order under s 10 (1) is concerned there is a special appeal provided by clause 2 A I R 1934 Pat 522

Cognizance of offences 11 No Court inferior to that of [a Presidency Magistrate or]* a Magistrate of the first class shall try any offence against this Act

Saving in case of infringement by construction of building 12 The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act, regarding the restrictions on remedies in the case of a work of architecture, applies

CHAPTER IV

MISCELLANEOUS

Courts having civil jurisdiction regarding infringement of copyright

13 Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge

Notes—finality that is given to High Court—Stat changes remain

It has been pointed out that it might cause unnecessary delay. *Select Committee Madras*
City Civil Court has no jurisdiction to try a suit for infringement of copyright. Section 3 of the City Civil Court Act gives general jurisdiction to the City Civil Court but the Copyright Act which deals with the special subject matter of copyright clearly restricts jurisdiction to hear a suit or proceeding relating to copyright to the High Court and the District Court. A I R 1937 Mad 94

14 No suit or other civil proceeding instituted after the 30th of October, 1912 regarding infringement of copyright in any book the author whereof was at the time of making the book resident in [British India,]† or of any book first published in [British India]† shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyright Act, 1847

Notes—This clause which is self explanatory has been added in view of a recent decision in *Evans v Morris* reported in the Law Journal of 19th March 1913—*Statement of Objects and Reasons*

15 [Repeals] [(Repealed by the Repealing Act, 1927 (XII of 1927)]

* In Burma the words within brackets have been omitted by G O Order of 1937

† In Burma for the words 'British India' read 'British Burma'—*Vide G O Order of 1937*

in such a case there is no invasion of any right. But a copy, much less a servile copy of a work cannot be allowed. A I R 1931 Lah 77. An author or compiler is undoubtedly at liberty to draw upon a common source of information but if he saves himself the trouble and labour requisite for collecting that information by adopting another author's work with colourable variation he infringes the latter's copyright although the latter's work may be based on materials which are common property. An author of a school text book on the same subject as a previous author and for use in the same class having to express the same ideas in the best possible manner suited to his reader is entitled to use the most suitable words and expressions even though the other author may have used them before so long as he does not in fact intend his book to resemble the other author's book so long as such words or expressions are not of that other author's coinage. He is not bound to choose unhappy expressions only to avoid resemblance. In cases of this nature it is not one or two passages here and there that count it is the general impression that is left on one's mind which is to be regarded. In the same way the similarity of materials does not prove or constitute infringement because the materials unless the book is intended to contain incorrect inadequate or incomplete information must necessarily be the same. 61 C L J 573 39 C W N 945. Where the plaintiff asked for damages under s 6 on the footing of the loss sustained and in the alternative under s 7 for the delivery of unsold infringing copies and damages in respect of the infringing copies sold and the Court awarded damages under s 6 and also decreed delivery of the unsold copies held that the plaintiff could not claim damages also. A I R 1931 Cal 233-51 C L J 243=34 C W N 540-126 Ind Cas 197.

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8 If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright he shall be punishable with fine which may extend to five hundred rupees.

9 If any person, after having been previously convicted of an offence punishable under section 7 or section 8, is subsequently convicted of an offence punishable under either of these sections he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees or with both.

10 (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to

Power of Court to dispose of
infringing copies or plates for
purpose of making infringing
copies

is tried may, whether the alleged offender is
convicted or not, order that all copies of
the work or all plates in the possession of
the alleged offender, which appear to it to

be infringing copies or plates for the purpose of making infringing copies be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit

(2) Any person affected by an order under sub section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie, and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

Notes—So far as the order under s 10 (1) is concerned there is a special appeal provided by clause 2 A I R 1934 Pat 522

Cognizance of offences

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Saving in case of infringement
by construction of building

restrictions on remedies in the case of a work of architecture, applies

11 No Court inferior to that of
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was at the time of making the book
resident in [British India],† or of any book first published in [British
India] only that the registration of such
accordance with the provisions of the

Effect of non registration under
Act XX of 1817

Notes—This clause which is self explanatory has been added in view of a recent decision in *Eaton v Morris* reported in the Law Journal of 29th March 1913—*Statement of Objects and Reasons*

15 [Repeals] [(Repealed by the Repealing Act 1927 (XII of 1927)]

* In Burma the words within brackets have been omitted by G B Order of 1937
† In Burma for the words British India read British Burma—*Ibid* G B Order of 1937

THE FIRST SCHEDULE

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA

(See section 3)

COPYRIGHT ACT, 1911

[1 & 2 Geo 5 CH 46]

ARRANGEMENT OF SECTIONS

PART I

IMPERIAL COPYRIGHT

Rights.

SECTIONS

- 1 Copyright
- 2 Infringement of copyright
- 3 Term of copyright
- 4 Compulsory licences
- 5 Ownership of copyright etc

Civil Remedies

- 6 Civil remedies for infringement of copyright
- 7 Rights of owner against persons possessing or dealing with infringing copies etc
- 8 Exemption of innocent infringer from liability to pay damages, etc
- 9 Restriction on remedies in the case of architecture
- 10 Limitation of actions

Importation of copies

- 14 Importation of copies
- Delivery of Books to Libraries*
- 15 Delivery of copies to British Museum and other libraries

Special Provisions as to certain Works

- 16 Works of joint authors
- 17 Posthumous works
- 18 Provisions as to Government publications
- 19 Provisions as to mechanical instruments
- 20 Provision as to political speeches
- 21 Provisions as to photographs

SECTIONS

- 22 Provisions as to designs registrable under 7 Edw VII c 29
- 23 Works of foreign authors first published in parts of His Majesty's dominions to which Act extends
- 24 Existing works
- Application to British Possessions*
- 25 Application of Act to British dominions
- 26 Legislative powers of self governing dominions
- 27 Power of Legislatures of British possessions to pass supplemental legislation
- 28 Application to protectorates

PART II

INTERNATIONAL COPYRIGHT

- 29 Power to extend Act to foreign works
- 30 Application of Part II to British possessions

PART III

SUPPLEMENTAL PROVISIONS

- 31 Abrogation of common law rights
- 32 Provisions as to Orders in Council
- 33 Saving of University copyright
- 34 Saving of compensation to certain libraries
- 35 Interpretation
- 36 Repeal
- 37 Short title and commencement

SCHEDULES

CHAPTER 46

An Act to amend and consolidate the Law relating to Copyright

[16th December, 1911]

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows —

PART I

IMPERIAL COPYRIGHT

Rights

1 (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original, literary, dramatic, musical and artistic work, if—

Copyright

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid, and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid, but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public, if the work is unpublished, to publish the work or any substantial part thereof, and shall include the sole right—

(a) to produce reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered, and to authorise any such acts as aforesaid

(3) For the purposes of this Act, publication in relation to any work, means the issue of copies of the work to the public and does not include the performance in public of a dramatic or musical work the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works

ten years of research work and represents a maturer art and a greater wealth of details in depicting the various incidents and the imagery is of a superior type and there are fresh incidents and details which are the result of researches made by the author into works

plan may confer copyright though the book is but a compilation from other works A I R 1931 All 95-43 All 412-19 A L J 180 61 Ind Cas 394

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v Cooper, 28 C W N 613 copyright was denied in a case where slight alterations were
made in an old non copyright text

In *Fredrick Emerson v Clas Davies* 3 Story U S Rep 768 the plaintiff had com-
piled and published a book entitled 'The North American Arithmetic' described as

those words are to be understood in cases of copyright The question is not whether the
materials which are used are entirely new and have never been used before or even
that they have never been used before for the same purpose The true question is
whether the same plan arrangement and combination of materials have been used before
for the same purpose or for any other purpose If they have not then the plaintiff is en-
titled to a copyright although he may have gathered hints for his plan and arrangement
or parts of his plan and arrangement from existing and known sources He may have

borrowed much of his materials from others but if they are combined in a different manner from what was in use before he is entitled to a copyright. It is true that he does not thereby acquire the right to appropriate to himself the materials which were common to all persons before so as to exclude those persons from a future use of such materials but then they have no right to use such materials with its improvements superadded whether they consist in plan arrangement or illustrations or combinations for these are strictly his own. In truth in literature in science and in art there are and can be few, if any things which in an abstract sense are strictly new and original throughout.

In the case of *Macmillan v Suresh Chandra Deb* 17 Cal 951 the question was

of the selection already made by another. This passage was approved of by Lord Hatherly in *Spry v Brown* 6 W R (Eng) 852 see also *Moffat and Paine v Gill*, 130 N S 7 188.

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Copyright Act of 1911 cannot be defined in precise terms. In every case it must depend largely on the special facts of that case and must in each case be very much a question of degree. — *See Lord Atkinson* in 28 C W N 613 at p 623 P C.

In *Lord Atkinson v Lord Atkinson* 1870 which dealt with the alleged

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In *J. Arnold v. Hulston* the plaintiffs were the publishers of a book written by Dr. Brewer called the 'Guide to Science'. The Vice-Chancellor *S. H. Page* had fully ascertained the object with which this book was compiled and published and the sources

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Trade Auxiliary v. Middlesboro 40 Ch. D. 42

v. Auxiliary Land and Water L. R. 9 Ex. 324

1 Q. B. 147 *Nisbet v. Golf Agency* (1907) 23 T. L. R. 30 *Weatherly v. International*

(1910) 2 Ch. 297 *Leslie v. Young* (1891) A. C. 335

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Compilation—A copyright may exist in a compilation 43 A 412 61 Ind Cas 391=19 A L J 110 see also A I R 1935 Lah 282 156 Ind Cas 811 The compiler of a work in which absolute originality is of necessity excluded is entitled, without exposing himself to a charge of piracy to make use of preceding work upon the subject where he bestows such mental labour upon what he has taken and subjects it to such revision and correction as to produce an original result A I R 1933 All 266 see also *Syers v Brown* (1858) 6 W R 302 *Reale v Lacy* (1861) 1 J & H 524-30 L J Ch 655 *Hollen v Arthur* (1863) 1 H & M 603-32 L J Ch 771 Where a person compiled his

Reports of Cases—A reporter has no copyright in the reports of cases but he has such a right in the selection of cases and in the arrangement of reporting The principle is that every body is entitled to resort to the common source of information but they must exercise their own labour and skill 18 G W N 1078 'The headnote or the side or marginal note of report is a thing upon which much skill and exercise of thought is required and as such is a subject matter of copyright *Suet v Beuning* 16 Q B 491 *D'Almaine v Bossey* (1835) 1 Y & C 228

Translation—Copyright may exist in the translation of a work *Byrne v Statist Co*, (1914) 1 K B 622 The author of a book is entitled to copyright in a translation of it, as if it were an original work 13 A L J 636

Title of a book—The title of a book is not a subject matter of copyright *Licensed Victuallers Newspaper Co v Bringham* 83 Ch D 189

Unpublished work—An assignee of an unpublished literary work acquires copyright in it 39 M L J 341=59 Ind Cas 229=12 L W 151-(1920) M W N 426

Libellous immoral or obscene work—A copyright in a libellous, immoral or obscene work will not be enforced *Copinger* 59 citing *Stockdale v Onnhy* 1826 5 B & C 173 *Hume v Dale* (1803) cited 2 Camp 28 *Walcot v Walker* (1802) 7 Ves 1 *Poplett v Stockdale* (1825) 1 Ryan & M 337 *Geo v Richard* (1816) 2 Swans 418 *Soultie v Sherwood* (1871) 2 Mer 435 *Murraj v Benbond* (1822) 1 Jac 474 *Laurence v Smith*, 1 Jac 472 *Fores v Johnes* (1802) 4 Esp 97 *Gale v Leckie* (1878) 2 Stark N P C 107 *Baschet v London Illustrated* (1900) 1 Ch 73 *Glyn v Western Features Film Co*, (1916) 1 Ch 261

Original Dramatic Work—In *Tate v Fullbrook*, (1908) 1 K B 821 it was held that a dramatic work was not entitled to be protected against piracy by public performance unless it was capable of being printed and published The actual decision in *Tate v Fullbrook* to the effect that mere scenic effects are not the subject of protection has been approved under the Act of 1911—*Copinger* p 68 citing *Tate v Thomas* (1921) 1 Ch 503

Musical Work—A musical work may also be a dramatic work *Russell v Smith* (1848) 12 Q B 217 *Clark v Bishop* 25 L T 908 *Roberts v Bignall* 3 T L R 552, but see *Fuller v Blackpool Winter Gardens* (1895) 2 Q B 429

Artistic Work—This Act includes among artistic works of painting drawing, sculpture and architectural works of art and 35 (1) see also *Grates Case*, (1869) L R 4 in the subject *De Berenger v Heble* (1891) (1740) 2 Atk 91 In *Grates Case* (1869) L

J 875 see also *Bradbury v Day* 82 1 L R 319

Published—A place of publication is a place where copies are received by the publisher for price or gratuitously *Mc Ferlane v Hilton* (1899) 1 Ch 84 *Brat Kenney* (1902) 19 T L R 12 *Nouell v Sudlow*, (1852) 12 C B 177, *Blair Ingram* (1887) 3 T L R 687, *Alexander v Mackenzie*, 9 Sess Cas 2nd Ser

1004 In the case of artistic work or design exhibited for sale *Blanch v Footman* (1 (1902) 18 T L R 525 *Dalglisch v Ja* picture in public for the purpose of obtaining publication *Turner v Robinson*, 10 Ir 10 Ch Rep 510 *Britain v Bennett* (1900) 20 L R 222 — *Oldfield The Law of Copyright* p 46

Intention — When an advertisement agent and information given to him by the adviser, if the contrary draw the inference that it was copyright in the advertisement should belong to
72 S J 102 = 44 T L R 264

2 (1) Copyright in a work shall be deemed to be infringed by

Infringement of copyright any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright Provided that the following acts shall not constitute an infringement of copyright —

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch plan, model or study made by him for the purpose of the work provided that he does not thereby repeat or imitate the main design of that work

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in public place or buildings, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art

(iv) The publication in a collection mainly composed of non-copyright matter, *bona fide* intended for circulation, in which is described in the title and in any advertisement or passages from published literary or the use of schools in which copyright subsists Provided that not more than two of such passages from works by the same author are published by the same publisher within five years and that the source from which such passages are taken is acknowledged

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given and, except whilst the building is being used for public worship in a position near the lecturer, but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries

(vi) The reading or recitation in public by one person of any reasonable extract from any published work

(2) Copyright in a work shall also be deemed to be infringed by any person who—

- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire or
 - (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright or
 - (c) by way of trade exhibits in public, or
 - (d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends
- any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure offering for sale or hire distribution exhibition, or importation took place

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright unless he was not aware and had no reasonable ground for suspecting, that the performance would be an infringement of copyright

Any person —This term includes company *Marzials v Gibbons* (1874) L R 9 Ch 519 *McLean v Mood*, 20 Sess Cas 1154

Consent —No written consent is necessary Consent may be presumed from circumstances *Copper v Stephens*, (1895) 1 Ch 567 *Dunne v Asldon* (1897) 13 T L R 226 *Dorcas v Coole* (1903) 2 K B 294 236 A licensee can sue for infringement *British Film Actors v Glover* (1916) 1 K B 299

Proviso to s 2 —(1) Proviso allows only two passages from works of another and not from each work of such another A I R 1933 All 474—1933 A L J 791

Fair dealing —As a question of strict law apart from exceptional cases the privilege of fair use accorded to a subsequent writer must be such, and such only as will not cause substantial injury to the proprietor of the first publication but cases frequently arise in

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and if any body uses that patent although he has made independent investigations he infringes the patent But in the case of copyright that is not so It is always s, and the fact that the defen

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printed but also when a book in respect of which a copyright exists is sold. There is a fresh cause of action on the sale of every book. A I R 1934 All 922

'The moral basis on which the principle of these protective provision rests is the Eighth commandment. Thou shalt not steal. 28 C W N 613 P O. In *Walter v. Lane* (1900) A C 539 at p 547 Lord Halsbury said 'I should very much regret if I were compelled to come to a conclusion that the law permitted one man to make a profit and to appropriate to himself what has been produced by the labour skill and capital of another.'

Ignorance is no excuse for infringement (1908) 2 Ch 441, (1847) 3 C B 871, (1884) 27 Ch D 260 (1914) 1 K B 622. A person is liable for infringement of copyright made by his servant in the course of his employment (1924) 1 K B 762, (1885) 2 T L R 685

it in public (9) By dealing with copies made or imported in contravention of the Act—
Copyright p 118

Ch 121=103 L J Ch 210

3 The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death

Term of copyright

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act, thirty years from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent on the price at which he publishes the work, and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties

Notes—

has—save in the excepted cases which will be dealt with later on—on bearing upon the determination of copyright protection. Under the law which gives an alternative period of copyright for literary works either for the life of the author and seven years after his death or a gross period of forty-two years which should be the longer the works of the author were liable to fall into the public domain at different times but under the new Act all the works of the same author will—save in the excepted cases—fall into the public domain at one and the same time namely fifty years after his death”—*Copinger* p 85

The above proviso is to apply to photographic works as if the author died at the date when his work was first published, performed or delivered to the public. There is no similar provision expressly extending the proviso to photographic and mechanical contrivances and it is submitted that these cannot be compulsorily reproduced upon a royalty basis—*Copinger* p 88

A third exception is made in the case of

does not cover those who about themselves for use 32=(1923) 1 Ch 127=140 L R 370

Work, meaning of—The word 'work' as used in the singular in section 3 of the Copyright Act, 1911, by virtue of s 1 of the Interpretation Act 1859 includes the word 'works' in the plural *Osborne v Dunstons* 91 L J Ch 303—(1925) Ch 369=133 L T 362

4 If, at any time after the death of the author of a literary, dramatic or musical work which has been published or performed in public, a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit

Compulsory licences

Notes—"There must be a refusal to republish or allow republication or performance in public and it must be shown that by reason of such refusal, the work is withheld from the public—it must also be after the death of the author"—*Oldfield's Law of Copyright*, p 67.

Ownership of copyright, etc 5 (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright,

(b) where the author was in the employment of some other person under whom the work was made in the case of a person by whom the author was employed by agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations

tions to the United Kingdom or any self-governing dominion or other part of His Majesty's dominions to which this Act extends and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work

(3) Where under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the rights so assigned and the assignor, as respects the rights not assigned shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly

Author—No definition of the word "author" is given in the Act. In my opinion author involves originating making producing as the inventive or master mind the thing which is to be protected whether it be a drama or a painting or a photograph

At the 1856) ne an matic 1900 Lane whom

words are dictated for the purpose of being written down is not an author. *Ibid* But a medium is the author of copyright of a script dictated to her by a spirit. *Cummins v Bond* (1921) 1 Ch. 167. In a literary work the person who originates the language is the author and in an artistic work the person executes the design is the author. *Copinger* p. 93. see also *Hallenstein v Herbert*, (1867) 16 L. T. 453. *Levy v Rentsch* (1871) L. R. C. P. 528. *Free v Bowker* (1897) 74 L. T. 77. An author may com-

alter v Lane (1900) A. C. 539.
v Golf Agency (1907) 23 T. L.
1 who invents the subject of the
a design as well as furnishes
made in the first instance is an
a person who is incapable of

drawing even such a very simple picture as a rough sketch of the human head and who did not in fact set pencil to paper in the matter cannot be called the author of the drawing. *Kenn v Lawrence & Co* (1890) 25 Q. B. D. 99

In *Darnfield v Nicolson* 2 Sim. & St. 1 Sir John Leach said "I am of opinion that under the statute the person who forms the plan and who embarks in the speculation of a work and who employs various persons to compose the different parts of it adopted to their own peculiar requirements that is the person who so forms the plan and the scheme of the work and pays different artists of his own selection who, upon certain conditions contribute to it is the author and proprietor of the work if not within the literal expres-

sion at least within the equitable meaning of the Statute of Anne which being a remedial law is to be construed literally

Valuable consideration what it is — *Vile Melville v Mirror of Life Co* (1895) 2 Ch 531 *Stockman v Eaton* (1906) 1 Ch 774

The person by whom such plate etc — *Vile Little v Taylor* (1897) 1 Ch 467 *Bo cas v Ocolle* (1903) 2 K B 207

The mere failure of an author to make the payment prescribed by s 5 of Act XX of 1847 does not deprive him of his copyright in his book 39 M L T 328 105 Ind Cas 669=28 Cr L J 957

Contract of service T 1
person rendering
for holding it to be
dependence of such

K B 543 at p 553 There is a contract of service where the contract is such that the employer is entitled you do it by virtue of *Henlock*, 4 E & B 51
v *Noales* 6 Q B D
knowledge that the latter will publish them as a matter of course and the latter publishes the same the publication amounts to complete waiver by the author of whatever rights he may have had in the work in the interest of the general public 384 481=14 A L J 724=34 Ind Cas 357

Apprenticeship — An apprentice is a person bound to and who serves another for the purpose of learning some thing which the other is to teach him *St Panchras v Clapham*, 2 E & E 742 see also *R v Stinfild*, 14 East 541

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work may be much
performing or author
Tlo 1750 v Warner

Civil Remedies

6 (1) Where copyright in any work has been infringed, the owner of the copyright shall except as otherwise provided by this Act, be entitled to all such remedies by way of injunction
Civil remedies for infringement
of copyr ght

or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work,

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein

Notes—The owner of the copyright is either the original owner or a person who derives title through him. Where the right of the plaintiff is equitable only, he cannot sue without joining the legal owner. *Varieties* (1921) 1 C 1 see also *U* (1916) 1 Ch 601 *Boudens v H* proved *Exchange Telegraph v Ore* the owner cannot sue *Neilson v Stockdal* 3 Swan 687 *Petty v La* delivered to the owner *Mansell v*

action for damages for infringement of copyright in respect of a work do not put in issue the existence of the copyright in the work, there is an irrebuttable presumption that the alleged work is a work in which

those given by s 1, yet
often happens that
Where the amount of
publish the work in
1 R 1938 Lab 173.
1=105 L J Ch 150=

sections are not necessarily alternative, and a plaintiff may therefore claim damages both for infringement and conversion.

7 All infringing copies of any work in which copyright subsists, or of any substantial part thereof and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Rights of owner against persons possessing or dealing with infringing copies, etc

Notes.—'Infringing copies' mean copies including colourable imitation made or imported in contravention of the provisions of this Act. It is to be observed that proceedings for recovery under this section can only be taken when the whole work or any substantial part thereof is reproduced—when only a few passages were reprinted property in the infringing work would not pass. This is in substantial accord with the decision in *Rooney v Kelly* (1861) 21 Ir C L R at p 171 where the Court observed 'It would be difficult to maintain that under the 23rd section the proprietor of the copyright in a book would acquire the property of all copies of another book which contained printed therein a few pages or passages of his book. In such a case the plaintiff would be entitled to delivery for cancellation.' *Wane v Seabrook* (1848) 39 Ch D 73—*Oldfield* p 87. One of the co-owners can sue under this section. *Vide Laha v Beind* (1892) 3 Ch 402. *Cecinski v Rottledge*, (1916) 2 K B 325. In an action for breach of copyright, whether book was improperly used by another person is a question of fact. 142 Ind Crs 815—64 M L J 193—31 M L W 314. 1933 A L J 393—A I R 1933 P. C. 26. Under s 6 remedy of damages for loss sustained by infringement and under s 7 the plaintiff has right of delivering in respect of unsold infringing copies and action for conversion with regard to copies sold. Measure of damages under s 7 is not limited to profits but extends to full value of work converted. 31 C W N 540—51 C L J 243—A I R 1931 Cal 233. Owner of copyright can recover infringing copies unsold and price of copies for which they were actually sold. A I R 1938 All 266. Judgment in previous action for infringement against author of infringing work is no bar to the plaintiffs.

Ash v

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t of the
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Lane v

8 Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled

Exemption of innocent infringer from liability to pay damages, etc

to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable ground for suspecting that copyright subsisted in the work

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Rights of owner against persons possessing or dealing with infringing copies, etc.

Notes—"Infringing copies" mean copies including colourable imitation made or imported in contravention of the provisions of this Act. It is to be observed that proceedings for recovery under this section can only be taken when the whole work or any substantial part thereof is reproduced—when only a few passages were reprinted property in the infringing work would not pass. This is in substantial accord with the decision in *Rooney v Kelly*, (1861) 24 Ir C L R at p 171 where the Court observed "It would be difficult to maintain that under the 23rd section the proprietor of the copyright in a book would acquire the property of all copies of another book which contained printed therein a few pages or passages of his book". In such a case the plaintiff would be entitled to delivery for cancellation. *Wane v. Seabrook*, (1888) 39 Ch D 73—*Oldfield* p 67. One of the co-owners can sue under this section. *Vide Laka v Beand*, (1894) 3 Ch 402, *Cecinski v Poulledge*, (1916) 2 K B 325. In an action for breach of copyright, whether book was improperly used by another person is a question of fact. 142 Ind Cas 815=64 M L J 193=34 M L W 314=1933 A L J 393=A I R. 1933 P. C 20. Under s 6 remedy of damages for loss sustained by infringement and under s 7 the plaintiff has right of delivering in respect of unsold infringing copies and action for conversion with regard to copies sold. Measure of damages under s 7 is not limited to profits but extends to full value of work converted. 34 C W. N 540=51 C L J. 213=A I R 1931 Cal 233. Owner of copyright can recover infringing copies unsold and price of copies for which they were actually sold. A I R 1938 All 260. Judgment in previous action for infringement against author of infringing work is no bar to the action which the plaintiffs stands of author. *Ash v.* for damages under s 6. 7. f. "livery of t of the delivery also 34 articles in newspaper, *vide Ash v Ditchie*, (1936) Ch 655=105 L J Ch. 337, *John Lane v. Associated newspaper*, (1936) 1 K B 715.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled

Exemption of innocent infringer from liability to pay damages, etc.

to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable ground for suspecting, that copyright subsisted in the work

tions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence

(4) The regulations may apply to copies of all work the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention, and may provide for notices under any enactment repealed by this Act being treated as notices given under this section

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876 Provided that notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession

Delivery of Books to Libraries,

15 (1) The publisher of every book published in the United Kingdom, shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it

Delivery of copies to British Museum and other libraries

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depot in London named in the demand a copy of the book for, or in accordance with the directions of the authority having the control of each of the following libraries, namely the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College Dublin, and, subject to the provisions of this section, the National Library of Wales In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations :

thereto finished and coloured in the same manner as the best copies of the book are published and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the books and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered

(7) For the purposes of this section, the expression 'book' includes every part or division of a book pamphlet sheet of letter press sheet of music map plan chart or table separately published but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letter press or in the maps, prints or other engravings belonging thereto

Publisher—A publisher is one who projects conducts and carries on or is the proprietor of any encyclopedia a review magazine periodical work or work published in a series of books or parts or any book whatsoever *Ward Lock & Co Ltd v Long* (1906) 2 Ch 550 at p 560 cited in *Oldfield* p 104

Special Provisions as to certain Works

16 (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author

(2) Where in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid

(3) For the purposes of this Act "a work of joint authorship means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors

(4) Where a married woman and her husband are joint authors of

18 Without prejudice to any rights or privileges of the Crown where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work

Notes—Originally the copyright of all the publications belonged to the Crown. Gradually this right is partially lost by the Crown. Now the Crown has copyright in the authorised version of the Bible [*University of Oxford and Cambridge v Richardson* (1802) 6 Ves 689; *Manners v Blair* 3 Bl (N S) 391; *Red Letter Testament In re* (1900) 17 T L R 1] and Prayer Books. Before this Act Government had copyright

unpublished work of the Crown. This section has no application so far as a work published with licence of the Crown is concerned. (1926) 1 Ch 483

19 (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the parts of His Majesty's dominions to which this Act extends, records perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work, and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned

Provided that—

(i) nothing in this provision shall authorize any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner

of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question, and

(11) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent, and

(b) in the case of contrivances sold as aforesaid after the expiration of that period be five per cent

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a half-penny for each separate musical work in which copyright subsists, reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament, but where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions —

(a) The conditions as to the previous making by, or with the consent or acquiescence of the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply

(b) The rate of two and one half per cent shall be substituted for the rate of five per cent as the rate at which royalties are to be calculated but no royalties shall be payable in respect of contrivances sold before the first day of July, 1913 if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, 1910

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives

(d) The saving contained in this Act of the rights and interests arising from or in connexion with action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived

Provided that—

(i) the person who at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright, and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance if this provision had been in force at the time of the making of the first-mentioned contrivance

Sub section (1) —Section 1 sub section 2 (d) for the first time gives the author of a make any record perforated roll cine which the work may be mechanically (1914) 1 K B 395 This section which is not in terms provide that of the owner of the copy must be limited to a (Bom 472

Sub section (2) The author of a musi to the author and under an assign (Ch 127 745

Sub section (6) —Under sub section (6) the Board of Trade may make regulations prescribing the mode time and frequency of payment of royalties and any such regulations may if the Board think fit include regulations requiring payments in advance or otherwise securing the payment of royalties —(1914) 1 K B 395

20 Notwithstanding anything in this Act it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper

Provision as to political speech

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21 The term for which copyright shall subsist in photographs shall be fifty years from making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and where such owner is a body corporate the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts

Notes

315, *Bolton v London Exhibitions* 14 T L R 550

22 (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process

(2) General rules under section 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid

Notes —This section is intended to make the distinction between the law of copy and the law of design Under the old law there was no considerable overlapping. Such division has, however now become necessary by reason of the inclusion of works of

craftsmanship and architectural works of art as matter for copyright protection—*Oldfield's Law of Copyright* p 124 The plaintiffs who author of two sketches representing a pierrot and bodies cut out and mounted on wood and with the with the intention that copies should be made from dants for infringement of copyright The costumes of the figures were coloured mauve and defendant's name painted in red When the defendants saw the figures they

designs under the Patents and Designs Act 1907 ascertain their rights *Held* (1) that under section the sketches were engravings within the meaning ordered by and made for the defendants for valuable dants were the first owners of the copyright in sketches were designs which were capable of being Designs Act 1907 that the Copyright Act 1911 t to them because they were used or intended to be use plied by an industrial process and that the plain sketches had not been registered as designs under the F *Plaisie Ltd v Holynos, Incorporated* 91 L J K T 798

23 If it appears to His Majesty that a foreign country does not

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends

give or has not undertaken to give, adequate protection to the works of British authors it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of his Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works

Notes.— The intention of this Act is that by C tection under the Act should be extended to foreig reciprocal advantages and it may be assumed that s Act comes into force in favour of those countries tha so that any author who first publishes in a union same treatment if he were a native of the country Council to withhold the advantages of the Act or have been conferred if such a case should arise as to it appears that a foreign country does not give or has not undertaken to give adequate protection to the works of British authors' —*Oldfield's Law of Copyright* p 128

24 (1) Where any person is immediately before the commence-

Existing works

ment of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder

Provided that—

(a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act

subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine but the person who immediately before the date at which the right would have so expired was the owner of the right or interest shall be entitled at his option either—

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as failing agreement, may be determined by arbitration or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment,

the notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the London Gazette and in two London newspapers,

(b) where any person has before the 26th day of July, 1910, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author

(3) Subject to the provisions of section 19, sub sections (7) and (8) and of section 33 of this Act, copyright shall not subsist in any work made before the commencement of this Act otherwise than under, and in accordance with, the provisions of this section

Notes—An entry in the Copyright Register Book under section 3 of the previous

in force at the time when this was made for the purpose of computing the term for which copyright subsists—*Oldfield v Law of Copyright* p 129 Where copyright subsists on date of Act new copyright is substituted for old one 1931 A L J 304=32 Cr L J 814 =A I R 1931 All 353 Under this section no new right was conferred on an author in respect of an existing book Whatever copyright he had at the commencement of the Act was continued in his favour A I R 1934 All 922=A L R 1934 All 447

Proviso (a)—By period less than the would automatically

Application to British Possessions

25 (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature

(2) If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends, and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act

Notes—The result is that until this Act with or without modifications has been in force there—
under this
the dominion
is conferred
dominion to
which the Act extended But the certificate does not and cannot extend the (English) Act to the dominion, if it is not in force there 171 Ind Cas 406=A I R 1937 P C 376 (P C)

26 (1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion Provided that no such

repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion that dominion shall cease to be a dominion to which this Act extends

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first mentioned dominion, and to works first published in that dominion, but save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this sub-section, authorised to confer within other parts of His Majesty's dominions

For the purposes of this sub-section, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends

Notes—It is to be noted that sub section (1) gives the Legislature of any self governing dominion power to repeal any enactment relating to copyright including the Act of 1911 all the dominions have now repealed the legislation prior to the Act of 1911 which applied to them—*I ide Copinger* p 301

27 The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession

Power of Legislatures of British possessions to pass supplemental legislation

Notes—This section was adopted by the Conference 1910 unless adopted by within the possession

28 His Majesty may, by Order in Council, extend this Act to any territories under his protection and Application to protectorates to Cyprus, and on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends

Notes —The administration of Cyprus is entrusted to England under a treaty of June 4 1878

PART II

INTERNATIONAL COPYRIGHT

29 (1) His Majesty may, by Order in Council, direct that this Act (except such parts if any, thereof as Powers to extend Act to foreign works may be specified in the Order) shall apply—

(a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends,

(b) to literary, dramatic, musical and artistic works, or any class thereof, the authors whereof were at the time of the making of the works, subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects,

(c) in respect of residence in a foreign country to which the Order relates in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends and thereupon subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make such provisions if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act,

(ii) the Order in Council may provide that the terms of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates,

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order,

(v) in applying the provisions of this Act as to ownership of copyright the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country,

(vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary,

and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886 *

(2) An Order in Council under this section may extend to all the several countries named or described therein

Notes — I' - C' - - C' - - -
with regard to
(i) works pc
and (iii) un
p 231

30 (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion make the like Orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions

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provisions of any Order any part of his dominions, not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order

Notes — Under this section the self governing dominions are enabled to make their own Orders in Council applying the law in such dominion to foreign works This is new law — *Oldfield's Law of Copyright* p 148

PART III

SUPPLEMENTAL PROVISIONS

31 No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence

Notes — The new Act however abolished common law copyright, and confers statutory copyright upon all works as from the date when the same are made In

* originate from some contract for
 lied from the circumstances of the
 & G 25 see also *Wabe v Rose*
 1 *Maclean v Richardson* (1770)
 2 *Eden* 329 *Lamb v Evans*
 518, *Robb v Green* (1805) 2 Q
 r v *Menzal* (1913) 2 Ch 239
 1837) 19 Q B D 629 *Pollard*
vs, (1837) 12 A C 326 But in
 it must be proved that the defen
 of contract or confidence or was
 No action for breach of trust or
 f the manuscript without notice

32 (1) His Majesty in Council may make Orders for altering,
 Provisions as to Orders in Council revoking or varying any Order in Council
 made under this Act, or under any enact-
 Council ments repealed by this Act, but any Order
 made under this section shall not affect prejudicially any rights or
 interests acquired or accrued at the date when the Order comes into
 operation, and shall provide for the protection of such rights and
 interests

(2) Every Order in Council made under this Act shall be published
 in the London Gazette and shall be laid before both Houses of Parlia-
 ment as soon as may be after it is made, and shall have effect as if
 enacted in this Act

33 Nothing in this Act shall deprive any of the universities and
 Saving of university copyright colleges mentioned in the Copyright Act,
 1775,* of any copyright they already possess
 under that Act, but the remedies and penalties for infringement of any
 such copyright shall be under this Act and not under that Act

Notes.—The result of the section is that no new perpetual copyright can be acquired by
 any university or college.—*Oldfield's Law of Copyright* p 150

34 There shall continue to be charged on, and paid out of, the
 Saving of compensation to cer Consolidated Fund of the United Kingdom
 tain libraries such annual compensation as was immedi-
 tely before the commencement of this Act
 payable in pursuance of any Act as compensation to a library for the
 loss of the right to receive gratuitous copies of books

Provided that this compensation shall not be paid to a library in
 any year unless the Treasury are satisfied that the compensation for
 the previous year has been applied in the purchase of books for the
 use of and to be preserved in the library

Interpretation

35 (1) In this Act, unless the con-
 text otherwise requires,—

'Literary work' includes maps, charts plans, tables and com-
 pilations,

'Dramatic work' includes any piece for recitation, choreographic
 work or entertainment in dumb show, the scenic arrangement or acting

form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character,

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs,

"Work of sculpture" includes casts and models,

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design and shall not extend to processes or methods of construction,

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs,

"Photograph" includes photo lithograph and any work produced by any process analogous to photography,

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

(a) an encyclopædia, dictionary, year-book, or similar work,

(b) a newspaper, review, magazine, or similar periodical, and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated,

"Infringing", when applied to a copy of a work in which copyright subsists, means any copy including any colourable imitation made or imported in contravention of the provisions of this Act

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument,

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument,

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made,

"Lecture" includes address, speech, and sermon,

"Self governing dominion" means the dominion of Canada, the Commonwealth of Australia the dominion of New Zealand, the Union of South Africa, and Newfoundland

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns

(3) For the purposes of this Act, a work shall be deemed to be published within the parts of His Majesty's dominions to which this Act extends notwithstanding that it has been published

order to give rise to such a breach of trust or confidence, it must be proved that the defendants either published the work by committing a breach of contract or confidence or was fully aware of all the circumstances *Copinger*, p 31 No action for breach of trust or confidence can be brought against a *bonafide* purchaser of the manuscript without notice *Phillip v Pennell*, (1907) 2 Ch 567

originate from some contract for ed from the circumstances of the & G 25, see also *Webe v Rose Maclean v Richardson*, (1770) 2 Eden 329, *Lamb v Evans*, 18, *Robb v Green* (1895) 2 Q v *Menzel* (1913) 2 Ch 239 837) 19 Q B D 629, *Pollard*, (1887) 12 A C 326 But in

32 (1) His Majesty in Council may make Orders for altering, revoking or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests

(2) Every Order in Council made under this Act shall be published in the London Gazette and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775,* of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act

Notes—The result of the section is that no new perpetual copyright can be acquired by any university or college—*Oldfield's Law of Copyright*, p 150

34 There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library

Interpretation

35 (1) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting

form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character,

"Artistic work" includes works of painting drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs,

"Work of sculpture" includes casts and models,

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure provided that the protection afforded by this Act shall be confined to the artistic character and design and shall not extend to processes or methods of construction,

"Engraving" means any engraving, etching, lithography, or other process of producing cuts, prints, and

by any process analogous to photography,

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

(a) an encyclopædia, dictionary, year-book, or similar work,

(b) a newspaper, review, magazine, or similar periodical, and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated,

"Infringing", when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation made or imported in contravention of the provisions of this Act

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument,

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument,

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made,

"Lecture" includes address, speech, and sermon,

"Self governing dominion" means the dominion of Canada, the Commonwealth of Australia, the dominion of New Zealand, the Union of South Africa, and Newfoundland

(2) For the purposes of this Act (other than those relating to infringements of copyright) a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends notwithstanding that it has been pub

in some other place unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may for the time being, be fixed by Order in Council

(4) Where, in the case of an unpublished work the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part

Domicile—Residence and domicile are not necessarily the same. The distinction between the import of the terms residence and domicile is obvious. The first is used to indicate the place of dwelling whether permanent or temporary the second to denote a fixed permanent residence to which when absent one has the intention of returning. *Per Beck J in Cohen v Daniel* 25 Lwa 90. By domicile we mean home—the permanent

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540—126 Ind Cas 197

36 Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part

Notes—The repeal is to take effect in the first instance in the United Kingdom of Great Britain and Ireland

Short title and commencement **37** (1) This Act may be cited as the Copyright Act 1911

(2) This Act shall come into operation—

(a) In the United Kingdom, on the 1st day of July, 1912 or such earlier date as may be fixed by Order in Council,

(b) in a self governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion,

(c) in the Channel Islands at such date as may be fixed by the States of those islands respectively,

(d) in any other British possession to which this Act extends on the proclamation thereof within the possession by the Governor

SCHEDULES *
FIRST SCHEDULE
Section 24
EXISTING RIGHTS

Existing Right	Substituted Right
<i>(a) In the case of Works other than Dramatic and Musical Works</i>	
Copyright	Copyright as defined by this Act †
<i>(b) In the case of Musical and Dramatic Works</i>	
Both copyright and performing right	Copyright as defined by this Act †
Copyright, but not performing right	Copyright as defined by this Act †
Performing right, but not copyright	Copyright as defined by this Act †

* Vide Section 24

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings —

‘Copyright’, in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work

‘Performing right’, in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public

SECOND SCHEDULE
[Enactments Repealed]

Session and Chapter	Short Title	Extent of Repeal
8 Geo 2 c 13	The Engraving Copyright Act 1731	The whole Act
7 Geo 3 c 38	The Engraving Copyright Act 1767	Ditto
15 Geo 3 c 53	—	Ditto
17 Geo 3 c 57	—	Ditto
54 Geo 3 c 56	—	Ditto
3 & 4 Will 4 c 15	—	Ditto
5 & 6 Will 4, c 65	—	Ditto
6 & 7 Will 4, c 59	—	Ditto
6 & 7 Will 4, c 110	—	Ditto
5 & 6 Vict c 45	—	Ditto
7 & 8 Vict c 12	—	Ditto
10 & 11 Vict c 95	The Colonial Copyright Act 1846	Ditto
15 & 16 Vict c 12	The International Copyright Act, 1852	Ditto

Session and Chapter	Short Title.	Extent of Repeal
25 & 26 Vict , c. 68	The Fine Arts Copyright Act, 1862.	Sections 1 to 6. In section 8 the words "and pursuant to any Act for the protection of copyright engravings," and "and in any such Act as aforesaid." Sections 9 to 12.
33 & 34 Vict., c. 12	The International Copyright Act, 1875	The whole Act.
39 & 40 Vict , c. 36	The Customs Consolidation Act, 1876	Section 42 from "Books where in" to "such copyright will expire." Sections 44, 45 and 152
45 & 46 Vict , c. 40	The Copyright (Musical Compositions) Act, 1882.	The whole Act
49 & 50 Vict., c. 33	The International Copyright Act, 1886	Ditto
51 & 52 Vict , c. 17.	The Copyright (Musical Compositions) Act, 1888	Ditto.
52 & 53 Vict , c. 42	The Revenue Act, 1889	Section 1, from "Books first published" to "as provided in that section "
6 Edw. 7 c. 36.	The Musical Copyright Act, 1906	In section 3 the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1814, which registration may be effected notwithstanding anything in the International Copyright Act, 1886".

[THE SECOND SCHEDULE]

[Repeals of Enactments] Repealed by the Repealing Act, 1927 (XII of 1927).

THE CORONERS ACT (IV OF 1871).

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THE CORONERS ACT, 1871

ACT NO IV OF 1871

(Received the Governor General's assent on the 27th January 1871)

An Act to consolidate and amend the laws relating to Coroners

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns,
Preamble
It is hereby enacted as follows —

Notes —The jurisdiction of a Presidency Magistrate is not ousted by an enquiry having been conducted by the Coroners under this Act Rat Un Cr C 540

CHAPTER I

PRELIMINARY

1 This Act may be called the Coroners Act 1871

Short Title

Local extent

[Repealed by Act X of 1881]

Commencement	[<i>Repealed by Act XVI of 1874</i>]
Repeal of enactments	2 [<i>Repealed by Act XII of 1873</i>]

CHAPTER II.

APPOINTMENT OF CORONERS

[3 Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay there shall be a Coroner. Such Coroners shall be called respectively, the Coroner of Calcutta and the Coroner of Bombay]*

Notes — A Coroner's Court in England is a Court of record. *vide Garnett v Ferrand* (1827) 6 B & C 611

Their appointment suspension and removal

4 Every such officer shall be appointed and may be suspended or removed by the [Provincial Government]†‡

Coroners to be public servants
Indian Penal Code

5 Every Coroner shall be deemed a public servant within the meaning of the

Power to hold other offices
ment

6 Any Coroner may hold simultaneously any other office under Govern

Oath to be taken by Coroner

7 [*Repealed by Act X of 1873*]

CHAPTER III.

DUTIES AND POWERS OF CORONERS

8 When a Coroner has reason to believe § that the death of any person has been caused by accident, homicide, suicide or suddenly by means unknown, or that any person being a prisoner, has died in prison and that the body is lying within the place for which the Coroner is so appointed, the Coroner shall enquire into the cause of death. Every such enquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code

* S 3 has been substituted by Act V of 1889

† Substituted by G I Order of 1937. But in Burma read the word Governor (*vide G I Order of 1934*)

‡ The second paragraph of s 4 having been repealed by Act VII of 1891 has been omitted

§ The words within quotations have been substituted for the words *is informed by* Act V of 1931 s 6

that the party came to his
on for the interference of the
ons die by the same accident

9 Whenever a prisoner dies in a prison situate within the place
Coroner to be sent for when prisoner dies for which a Coroner is so appointed, the
Superintendent of the prison shall send for
the Coroner before the body is disposed
of.* Any Superintendent failing herein shall, on conviction before
Magistrate be punished with fine not exceeding five hundred rupees

Nothing in the former part of this section applies to cases in which
the death has been caused by cholera or other epidemic disease

Notes—This section is also in accordance with English Law—*Vide* (1882) 9 Q B D 689

10 Whenever an inquest ought to be holden on any body lying
dead within the local limits of the jurisdic-
tion of any Coroner he shall hold such
inquest whether or not the cause of death
arose within his jurisdiction

Power to hold inquest on
bodies within local limits
wherever cause of death occurred

11 A Coroner may order a body to be disinterred within a
reasonable time after the death of the
deceased person either for the purpose of
taking an original inquisition where none
has been taken, or a further inquisition where the Coroner considers
it necessary or desirable in the interests of justice to take a further
inquisition.*

Power to order body to be
disinterred

12 On receiving notice of any death mentioned in section 8 the
Coroner shall summon five, seven nine
eleven thirteen or fifteen respectable
persons to appear before him at a time and place to be specified in the
summons, for the purpose of enquiring when, how, and by what means
the deceased came by his death

Summoning jury

Inquest may be on Sunday Any inquest under this Act may be
held on a Sunday

Notes—Where a person is exempted from serving as a juror under the Criminal
Procedure Code he is also exempted from serving as a juror under this Act *Re Dutton*
(1897) 1 Q B D 483

13 When the time arrives the Coroner shall proceed to the
place so specified open the Court by pro-
clamation and call over the names of the
jurors

Opening Court

14 When a sufficient jury is in attendance he shall administer
an oath to each juror to give a true verdict
according to the evidence, and shall then
proceed with the jury to view the body

Jurors to be sworn

Notes—The oath must be administered by the Coroner *P v Ferrand* (1819)
8 B & Ald 260 Under this Act a juror cannot be challenged *R v Ingran* (1864)
5 B L S 257

* The words within quotations have been substituted by Act IV of 1908

15 The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires

View of body

'Provided that the Coroner may with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates that no advantage would result from such viewing' *

Notes—According to English law an inquest by a Coroner held without view of the body is wholly irregular and extra judicial and any inquisition founded thereon is void *vide R v Ferrand* (1819) 3 B & Ald 260 *R v Carler* (1876) 45 L J Q B 711

16 The Coroner shall then make proclamation for the attendance of witnesses or, where the enquiry is conducted in secret, shall call in separately such as known anything concerning the death

Proclamation for witnesses

Notes—A witness, in favour of a suspected person should also be examined *Scott's Case* (1748) 1 Lecch 43 *P v Calmer* (1804) 9 Cox C D 506

17 'It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses, the Corner shall enquire of such circumstances and the cause of death and if before or during the enquiry, he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest †

Summoning witnesses

' Any person disobeying such summons shall be deemed to have committed an offence under section 174 section 175, or section 176 of the Indian Penal Code as the case may be ‡

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of "Part IX of the Prisoners Act 1900 §

18 The Coroner may direct the performance of a *post mortem* examination with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest, and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit

Post mortem examinations

Fees to medical witnesses

*[18A Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Act, may be used as evidence in any inquest under this Act and in any subsequent

Report of Chemical Examiner

* The words within quotations and s. 18A have been added by Act IV of 1908
 † The first two clauses of s. 17 have been substituted by Act V of 1881, s. 6 for the two clauses originally enacted
 ‡ This clause has been inserted by Act V of 1881
 § The words within quotations have been substituted by Act IV of 1908.

inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898]

19 All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person

Evidence to be on oath
Evidence on behalf of accused

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses

Interpreter

After each witness has been examined the Coroner shall enquire whether the jury wish any further questions to be put to the witnesses and if the jury wish that any such questions should be put, the Coroner shall put them accordingly

Questions suggested by jury

Notes—Statement during inquest cannot be used against the deponent during his trial for an offence suspected to have been committed during the proceedings for which the inquest was held A I R 1906 Bom 144—50 B 56 28 Bom L R 79=27 Cr L J 433=93 Ind Cas 225

20 The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness, and then procure his signature thereto

Coroner to take down evidence
in writing

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code

Witnesses to sign depositions

Coroner to subscribe depositions

Every such deposition shall be subscribed by the Coroner

Coroner a Magistrate

'For the purposes of section 26 of the Indian Evidence Act 1872 a Coroner shall be deemed to be a Magistrate' *

Notes—An incriminating statement made on oath by the accused during investigation by the Coroner may be used against him under s 26 of the Evidence Act in his trial before High Court 30 Bom L R 86—99 Cr L J 234 107 Ind Cas 272

A voluntary statement made on oath by the accused before the Coroner after due

Adjournment of inquest
to place

21 The Coroner may adjourn the inquest from time to time, and from place

* This clause has been added by Act V of 1881, s 7

which the inquisition will be quashed, and a fresh inquest ordered before another Coroner
R v Wood 97 L J K B 113=(13-8) 1 K B 302 *R v Bo re'ur* 17 Ir L T R 34,
Mitchel stoun Inquisition In re 22 L R Ir 279 An inquest upon a dead body must be
 w the body.
 97 L J K
 it a Coroner
 he jury and

privately to investigate with him any of the facts of the case. Nothing should be allowed which makes it certain that the jury will be influenced by things proved or seen outside the Court. *R v Divine* 99 L J K B 433-(1930) 2 K B 29=143 L T 235=94 J P 122

*[26 The Coroner may also, where the verdict justifies him in so doing issue, his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.]

27 [Power to accept bail—Repealed by Act IV of 1908]

28 When ' J - ' 1 , - 1 6 - 3 0 1

Warrant for hi

on which the inquest has been taken

Inquisitions not to be quashed for want of form

29 No inquisition found upon or by any inquest shall be quashed for any technical defect

In any case of technical defect, a Judge of the High Court may, if it thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Notes - There - - - - - + - - - - - this section to a case of
on of evidence it is not a
by the High Court 51 B
G = A I R 1927 Bom 163

30 It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act

Felo de se Deodands *A felo de se* shall not forfeit his goods
Deodands are hereby abolished

CHAPTER IV

CORONER'S JURY

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror, and upon the non-appearance of such person and proof that such

* The section 26 and the words within quotations have been substituted by Act IV of 1908

Whenever the inquest is adjourned, the Coroner shall take the recognizances of the jurors to attend at the time and place appointed and notify to the witnesses when and where the inquest will be proceeded with

The amount of such recognizances shall in each case be fixed by the Coroner and the whole, or such part thereof as to the Coroner may seem fit, shall, in default of attendance by the jurors, be recoverable, in the same manner as a fine imposed under section 31**

22 When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict

Notes —It would be wrong of a Coroner to examine an accused person on oath on the ground that he did not know that the person was an accused person and thereafter use that evidence in a trial for a charge based on that evidence 28 Bom L R 79=93 Ind Cis 225 27 Cr L J 433 A I R 1926 Bom 144

23 When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury or, when the jury is not unanimous, according to the opinion of the majority

24 Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

- (1) where, when, and before whom, the inquisition is holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when, and by what means, the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require

Notes —An inquisition drawn up by a Coroner though it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not the effect until it has been accepted by the High Court and the officers of the Crown have drawn up a charge in accordance with it 31 O 1=7 C W N 689

†[25 When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses to the Commissioner of Police]

Notes —In conformity to the ruling laid down in 16 B 159 and 31 C 1, this new section has been substituted for the old one by Act IV of 1908 For a Coroner to enter the jury room before the jury have found their verdict and to remain there though only for the purpose of giving the jury directions for which they have asked is misconduct, for

* The words within quotations have been added by Act IV of 1908

† Section 25 has been substituted by Act IV of 1908

summons has been served upon him or left at his usual place of abode may impose such fine upon the defaulter not exceeding fifty rupees, as to the Coroner seems fit

32 The Coroner shall make out and sign a certificate containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined by having it left at his usual place of residence, or by sending the same through the post-office, addressed as aforesaid and registered

33 Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself

34 Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest and has not made default, shall, within one year, after such appearance or summons be summoned to appear as a juror under this Act

35 When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison, and no prisoner confined therein, shall be a juror on such inquest

CHAPTER V

RIGHT AND LIABILITIES OF CORONERS

36 Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the [Provincial Government *]

37 All disbursements duly made by a Coroner for fees to medical witnesses hire of rooms for the jury, and the like, shall be repaid to him by the [Provincial Government *]

38 Every Coroner may, from time to time, with the previous sanction of the [Provincial Government]* appoint by writing under his hand, a proper person to act for him as his deputy in the holding of inquests†

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause

* The words within brackets have been substituted by G. I. Order of 1937. But in Burma read the word "Governor" (vide G. B. Order of 1937)

† Certain words repealed by Act IX of 1871 have been omitted

Revocation of appointment
by whom it was made

Every such appointment may at any time be cancelled and revoked by the Coroner

Exemption from serving on juries

39 No Coroner or Deputy Coroner shall be liable to serve as a juror

Privilege from arrest

40 Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty

41 Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose

Penalty for failure to comply with Act

42 No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted* after tender of sufficient amends

Proceedings barred by tender

failure to comply with its provisions, shall be commenced or prosecuted* after tender of sufficient amends

FIRST SCHEDULE

[*Repealed by Act XII of 1873*]

SECOND SCHEDULE

Form of Inquisition

An Inquisition taken at _____ on the _____ day of _____
18 _____ before E F Coroner of _____ in the case of A B deceased, † upon the oath of G H I J K L and M N then and there duly sworn and charged to enquire when how and by what means the said A B came to his death

We the said jurors find unanimously [or by a majority _____] that the death of the said A B was caused on or about the _____ day of _____ 18 _____ by [here state cause of death as in the following examples —

1 *Cases of homicide*—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [or accidental homicide]

—a stab on the heart with a knife inflicted on him by C D under such circumstances that the act of C D was culpable homicide not amounting to murder [or culpable homicide amounting to murder or a rash or negligent act not amounting to culpable homicide]

2 *Cases of accident*—falling out of a boat into the river Hugh whereby he was drowned

—a kick from a horse which fractured his skull and ruptured blood vessels in his head

3 *Cases of suicide*—shooting himself through the head with a pistol —[arsenic which he voluntarily administered to himself]

4 *Cases of sudden death by means unknown*—disease of the heart
—apoplexy
—sunstroke

And so say the jurors upon their oath aforesaid
Witness our hands E F Coroner of _____

G H I J K L M N O P (jurors)

* Certain words after this repealed by Act V of 1872 have been omitted

† The words within quotations have been substituted by Act IV of 1902

THE COTTON GINNING AND PRESSING FACTORIES ACT (XII OF 1925) CONTENTS.

Sections	Sections.
1. Short title, extent and commencement	10 Liability of officers of a company
2 Definitions	11 Cognizance of offences
3 Maintenance of registers	12 Power of the Central Government to make rules
4 Marking of bales	13 Power of Provincial Government to make rules
5 Returns	14 Power to reject unmarked bales in fulfilment of contracts
6 Scales and weights	15 Protection for acts done under Act
7 Liability of lessee as owner	
8 Liability on transfer of ownership	
9 Structural requirements for factories	

THE COTTON GINNING AND PRESSING FACTORIES ACT, 1925. ACT NO XII OF 1925

(Received the assent of the Governor General on the 18th March, 1925)

An Act to provide for the better regulation of cotton ginning and cotton pressing factories

WHEREAS it is expedient to provide for the better regulation of cotton ginning and cotton pressing factories, It is hereby enacted as follows —

Short title, extent and commencement 1 (1) This Act may be called the Cotton Ginning and Pressing Factories Act, 1925

(2) It extends to the whole of British India,* including British Baluchistan and the Sonthal Parganas

(3) It shall come into force on such date as the "Central Government"† may, by notification in the "official Gazette,"‡ appoint.

Definitions 2 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'bale' means any pressed package of cotton of whatever size or density,

(b) "cotton" means ginned or unginned cotton, or cotton waste;

(c) "cotton ginning factory" means any place where cotton is ginned or where cotton fibre is separated from cotton seed by any process whatever involving the use of steam, water or other mechanical power or of electrical power,

(d) "cotton pressing factory" means any factory as defined in the Indian Factories Act, 1911,‡ in which cotton is pressed into bales,

* The words 'except Burma' after this have been omitted in British India by G. I Order of 1937

in Burma read the word 'Gazette' for the words

(e) "cotton waste" means droppings, stripping, fly and other waste products of a cotton mill or of a cotton ginning factory or of a cotton pressing factory but does not include yarn waste,

(f) "Indian Central Cotton Committee" means the Indian Central Cotton Committee constituted under the Indian Cotton Cess Act, 1923,* and includes any sub-committee appointed by it to perform any function of the Indian Central Cotton Committee under this Act, and

(g) "occupier" includes a managing agent or other person authorised to represent the occupier,

(h) "prescribed" means prescribed by or under rules made under this Act

3 (1) The owner of every cotton ginning factory shall cause to be maintained at the factory in such form, Maintenance of registers if any, as may be prescribed, a ginning register containing a record of all cotton ginned in the factory and of the names of the persons for whom and the dates on which the cotton has been ginned and of the amount ginned for each person

(2) The owner of every cotton pressing factory shall cause to be maintained at the factory in such form, if any, as may be prescribed, a press register containing a daily record of the number of bales pressed in the factory, the serial number of each bale, and the name of the person for whom it has been pressed

(3) The owner or the person in charge of a cotton ginning or cotton pressing factory shall be bound to produce any ginning register or press register maintained under this section when required to do so by any person appointed by the Provincial Government† in this behalf and the owner or person in charge of any cotton pressing factory shall be bound to furnish to the Indian Central Cotton Committee, if so required by it in writing, a copy, certified as correct by the owner or person in charge of the factory of the entry in any press register maintained at the factory relating to any specified bale

(4) No register required to be maintained by this section shall be destroyed until after the expiration of three years from the date of the last entry therein

(5) If—

(a) in any factory any register required by this section to be maintained is not maintained or is maintained in any form other than the form if any, prescribed for the purpose, or

(b) any entry in any such register is proved to be false in any material particular, or

(c) any such register is destroyed before the expiration of the period referred to in sub-section (4)

the owner of the factory shall be punished with fine which may extend to fifty rupees or, if he has previously been convicted of any offence under this sub-section, to five hundred rupees

(6) If the owner or the person in charge of any factory fails to produce any register, or to furnish a certified copy of any entry, when

* Act 14 of 1923

† Substituted by G. I. Order of 1937 But in Burma read the word "Governor" (vide G. B. Order of 1937)

required to do so under sub-section (3), or furnishes a certified copy of an entry knowing or having reason to believe such copy to be false, he shall be punished with fine which may extend to fifty rupees or, if he has previously been convicted of any offence under this sub section, to five hundred rupees

4 (1) The owner of every cotton pressing factory shall cause every bale pressed in the factory to be marked in such manner as may be prescribed, before it is removed from the press-house, with a serial number and with the mark prescribed for the factory

(2) If any bale is removed from the press-house of any cotton pressing factory without having been marked as required by sub-section (1) the owner of the factory shall be punished with fine which may extend to fifty rupees

5 (1) The owner of every cotton pressing factory shall submit to the prescribed authority, within such time and in such form as may be prescribed weekly returns showing the total number of bales of cotton pressed during the preceding week and from the commencement of the season to the end of that week and the approximate average net weight of the bales pressed in that week

(2) The 'Provincial Government' * shall compile from the weekly returns and shall publish in such manner as, "it thinks fit," a statement showing the total number of bales pressed in the province during the week and from the commencement of the season to the end of the week to which the returns relate

Provided that the number of bales pressed in any individual factory shall not be published

(3) If default is made in submitting any return as required by sub-section (1) the owner of the factory shall be punished with fine which may extend to fifty rupees

(4) Where the owner of a cotton pressing factory has notified to the prescribed authority that the work of pressing bales in that factory has been suspended, it shall not be necessary for the owner to submit returns under sub section (1) until such work has been resumed

Explanation —In this section 'season' means the period notified in this behalf by the 'Provincial Government' * in the "official Gazette" †

6 (1) No scales or weights shall be used in any cotton ginning or cotton pressing factory other than the scales or weights, if any, prescribed by the 'Provincial Government' * as standard for the district in which the factory is situated

(2) If in any factory any scale or weight is used in contravention of the provisions of sub-section (1), the owner of the factory shall be punished with fine which may extend to fifty rupees or, if he has been previously convicted of any offence under this sub-section to five hundred rupees

7 But in Burma read the word

But in Burma read the word

7 (1) Where the owner of a cotton ginning or pressing factory has leased the factory for a period of not less than one month, in the case of a cotton ginning factory or three months, in the case of a cotton pressing factory, and the lessor retains no interest in the management or profits of the factory and notice of the lease has been given by the lessor and the lessee to the prescribed authority, the lessee shall be deemed to be the owner of the factory, from the date of the notice and for the period of the continuance of the lease, for the purposes of section 3, in respect of the registers maintained or to be maintained from that date and for that period, and for the purposes of sections 4, 5 and 6

(2) On the termination of the lease the lessee shall hand over to the lessor the registers maintained under section 3, and the lessor shall forthwith report to the prescribed authority any default of the lessee in complying with the provisions of this sub-section or in maintaining the registers in accordance with the provisions of section 3

(3) If default is made in handing over any register or making any report as required by this section, the lessor or the lessee, as the case may be, shall be punished with fine which may extend to fifty rupees

8 (1) On a transfer of the ownership of a cotton ginning or pressing factory, the transferor shall hand over to the transferee the registers maintained under section 3, and the transferee shall forthwith report to the prescribed authority any default of the transferor in complying with the provisions of this sub-section or in maintaining the registers in accordance with the provisions of section 3

(2) If default is made in handing over any register or making any report as required by sub-section (1), the transferor or the transferee, as the case may be, shall be punished with fine which may extend to fifty rupees

9 (1) In the case of cotton ginning factories the construction of which is commenced after the commencement of this Act—

Structural requirements for factories

(a) gin houses shall be provided with separate entrances and exists for the bringing in of unginned and the taking out of ginned cotton respectively, and

(b) the factories shall be constructed in accordance with plans and specifications approved by the prescribed authority

Provided that nothing in this sub-section shall apply to any factory in which only roller gins are used where the number of such gins is not more than four.

(2) Within such period after the commencement of this Act as may be prescribed, the owner of every cotton pressing factory in which cotton is handled on the ground floor shall cause the press-house to be paved or provided with other suitable flooring to the satisfaction of the prescribed authority

(3) If the owner of any factory fails to comply with any provision of this section which is applicable to the factory, he shall be punished with fine which may extend to one hundred rupees

(4) (a) Where the owner of a factory has been convicted under sub-section (3), the prescribed authority may serve on the owner of the factory an order in writing directing that such alterations shall be made in the factory, before a specified date, as in the opinion of the said authority are necessary to secure compliance with the provisions of sub-section (1) or sub-section (2), as the case may be

(b) Where the alterations are not made in accordance with the order served under clause (a) of this sub-section, the prescribed authority may serve on the owner and on the occupier, if any, of the factory an order in writing directing that the work of ginning or pressing cotton in such factory shall be suspended until the alterations have been made in accordance with the order served under clause (a) of this sub-section and the owner and the occupier, if any, shall be jointly and severally liable to fine which may extend to fifty rupees for each day on which cotton is ginned or pressed in the factory in contravention of the order served under this clause

10 Where the person guilty of an offence under this Act is a Liability of officers of a company company, every director, manager, secretary and other officer thereof who is knowingly a party to the default shall also be guilty of the like offence and liable to the like punishment

11 (1) No prosecution under this Act shall be instituted except Cognizance of offences by or with the previous sanction of the District Magistrate or a Chief Presidency Magistrate or a Magistrate of the first class specially empowered in this behalf by the [Provincial Government]*

(2) No offence punishable under this Act shall be tried by any Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class

12 The [Central Government]* Powers of the [Central Government]* to make rules may make rules to provide for—

(a) the allotment of a special mark to be used by each pressing factory for the purpose of the marking of bales ,

(b) the manner in which bales shall be marked , and

(c) the manner in which the weekly statements referred to in section 5 shall be published

13 The [Provincial Government]* may, by notification in the Power of the [Provincial Government]* to make rules [Official Gazette,]† make rules consistent with this Act to provide for all or any of the following matters, namely —

(a) the forms in which registers, records and returns are to be maintained or submitted, and the inspection of records and registers

(b) the appointment of the authority to whom and the time within which the returns required by section 5 shall be made .

* Substituted in British India by G. I. Order of 1937. But in Burma read the word 'Governor', (vide G. B. Order of 1937)

† Substituted in British India by G. I. Order of 1937. But in Burma read the word 'Gazette', (vide G. B. Order of 1937)

(c) the weights and scales to be used in cotton ginning and cotton pressing factories in any district in the province and the inspection of the same ,

(d) the appointment of authorities for the purposes of sections 7, 8 and 9 ,

(e) the manner of service of orders made under section 9 ,

(f) the powers of entry and inspection which may be exercised by District Magistrates or by any officer specially empowered in this behalf by the [Provincial Government ,]*

(g) any other matter which is to be or may be prescribed or for which provision is necessary in order to carry out the purposes of this Act

14 After the expiration of one year from the commencement of

Power to reject unmarked bales in fulfilment of contracts this Act, any person who has made a contract for the purchase of baled cotton may require that no bales other than bales marked in accordance with section 4 shall be supplied in fulfilment of such contract, and if he does so require no bale not so marked shall be tenderable in fulfilment of the contract

Provided that nothing in this section shall apply to a contract for the sale and delivery of cotton grown before, or less than one year after, the commencement of this Act

15 No suit or other legal proceeding shall be instituted against

Protection for acts done under Act any person in respect of anything which is in good faith done or intended to be done under this Act

THE CRIMINAL LAW AMENDMENT ACT (XIV OF 1908) CONTENTS

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16 Power to declare association unlawful		17E " " " "
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SCHEDULE

THE CRIMINAL LAW AMENDMENT ACT, 1908. ACT NO XIV OF 1908

(Received the assent of the Governor-General on the 11th December, 1908)

An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace. It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Indian Criminal Law Amendment Act, 1908

* Substituted in British India by G. I. Order of 1937. But in Burma read the word Governor. — J. L. G. B. Order of 1937

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam, but the ["Provincial Government"* of any other province]† may, at any time, by notification in the "official Gazette,"* extend the whole or any Part thereof to "that Province"††

PART I

[Sections 2 to 14 —*Repealed by s. 3 of Act V of 1922.*]

PART II.

UNLAWFUL ASSOCIATIONS.

Definitions

15 In this Part—

(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not, and

(2) "unlawful association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts or

(b) which has been declared to be unlawful by the "Provincial Government"* under the powers hereby conferred

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16 (1) If the "Provincial Government"* is of opinion that any association interferes or has for its object
Power to declare association unlawful

order, or that it consti
cial Government"* may
such association to be

17. (1) Whoever is a member of an unlawful association, or
Penalties takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be

* Substituted in British India by G I Order of 1937 But in Burma read the word "Governor" for the words "Provincial Government" and the word "Gazette" for the words "official Gazette" —1 s 16 G B Order of 1937)

† Substituted by Act 38 of 1920

‡ Sub-section (3) has been repealed by Act 5 of 1922

§ Sub-section (2) which was inserted by Act 23 of 1932 have been omitted by G I Order of 1937.

punished with imprisonment for a term which may extend to three years, or with fine, or with both

[(3) An offence under sub-section (1) shall be cognizable by the police, and notwithstanding anything contained in the Code of Criminal Procedure, 1908, shall be non-bailable]*

Clause (2) —Proceedings were instituted under this clause on a police report which ran as follows — 'A (accused) has been assisting the volunteers (congress) by giving them shelter in a house belonging to him in Tippera town. *Held* that the police report does not show a case under this clause 36 C L J 179. Where an association has been declared unlawful under s 16 prosecution must prove some overt act or conduct on the part of the accused which establishes his connection with the association at some time subsequent to such declaration. Also those who were connected with the association at the time of the declaration should be given a *locus penitentiae* to withdraw from the association within a reasonable time of its notification. A I R 1931 Lah 145 32 P L R 71 181 Ind Cas 353. There is no presumption that a person who was a member of a lawful association continued as a member after it has been declared unlawful. On the other hand Court must presume that he would cease to be a member after the declaration. Mere receipt of a letter

not only insert the declaration in the official Gazette but must publish it in such a manner as to allow reasonable opportunity for all people concerned to see it. 33 Bom L R 82. A I R 1931 Bom 132 130 Ind Cas 577. No association is unlawful till the date of publication in the Gazette of the notification declaring it unlawful. A person therefore arrested before that date is not guilty, even though he knew of the declaration prior to its publication. A I R 1931 Lah 107 181 Ind Cas 108. Presumption of membership of unlawful association is not enough. Actual membership must be proved. A I R 1931 Bom 203 32 Cr L J 725-33 Bom L R 333. Mere display of congress flags does not amount to 'assisting operations of an unlawful assembly. 140 Ind Cas 497 34 Cr L J 2=A I R 1933 All 95. 'Assists' means intentionally assists. A I R 1933 Mad 123-63 M L J 906=34 Cr L J 90. Congress is an unlawful association and can be taken judicial notice of *Ibid*. The words in any way assists the operations of any such association cover acts which assist even without the co-operation of such associations. A I R 1931 Bom 206 33 Bom L R 314. Publication of notice in a newspaper stating that meeting of an unlawful association is to take place and giving its time and place is assisting the promoters. *Ibid*. It is not necessary to issue the Gazette to the public. It is enough if the accused was shown a copy before his arrest. A I R 1931 Bom 203-33 Bom L R 333=1931 Cr C 347 131 Ind Cas 479. Where its procession can be co-incident connection between ciation to enable the Court to infer an intention to assist in those operations. The mere existence of a common aim between the accused and the unlawful association is not enough to involve assistance. A I R 1931 Bom 200 33 Bom L R 319 181 Ind Cas 470

Bom L R 333 32 Cr L J 718

To constitute the offence of promoting or assisting (1) there must be an association

organizes or assists in organizing a meeting is also promoting or assisting to promote it. 7 Lah 357=8 L L J 255 27 Cr L J 311 271 L R 529 96 Ind Cas 2-3. Where accused exhorted people to hold D'wans and to take steps to establish independent State

* Sub section (3) has been inserted by s 12, Act 33 of 1937

was formed held accused persons and his act therefore would come under Ind Cas 392 Where the accused addressed meetings appealing to the effect that he was a *Jathadar* (1) 27 Cr L J 907=7 Lah 357 (1) 27 Cr L J 907=7 Lah 357 declaring all associations illegal and speech at meetings of such association person who is in charge of an association assists in managing the association is it an offence not only to be a member of unlawful association or to take part in its meetings, but also to help it in any way and it is immaterial whether the person who renders such help has been authorised to do so or whether he acts purely on his own initiative Clause (1) of s 17 is intended to deal with members and all other persons identifying themselves with any unlawful body and clause (2) of s 17 is directed against the ringleaders 7 Lah 348=8 L L J 242=27 Cr L J 913=96 Ind Cas 257 =A I R 1926 Lah 357 Hoisting national flag or refusal to take it down when ordered by police is no offence under s (1) A I R 1933 Cal 695=34 Cr L J 925=145 Ind Cas 240 Disobedience of command to disperse is not ingredient of an offence under s 17 34 Cr L J 67 1 assembly are not guilty of two separate sentences illegal 37 M L W 47 which induces boys to A I R 1933 Lah 387—to boycott British goods under s 17 (1) or s 17 25 see also A I R 1932 Lah 613=34 P L R 32=34 Cr L J 67, A I R 1932 Lah 578=33 P L R 1002=34 Cr L J 72 Simply because object of unlawful association and object of some individual person are identical, such person cannot be held to be assisting the association unless connection between two is proved 144 Ind Cas 765=34 Cr L J 823=A I R 1933 Mad 369 Where the accused is shown to have assisted in the management of an association the object of which is unlawful he is liable to be convicted under this section 37 C W N 961

Double sentence under section 17 (1) of the Criminal Law Amendment Act of 1908 and section 4 of Ordinance of 1932 for picketing foreign cloth shop is not legal 142 Ind Cas 21=31 Cr L J 277=37 L W 476=1933 M W N 516=A I R 1933 Mad 337=64 M L J 351 Hoisting of national flag with intention to encourage unlawful association is an offence under s 17(1) 31 Cr L J 925=37 C W N 992=A I R 1933 Cal 695 But the display of congress flag over his shop by a shop keeper, apart from his motive in obtaining custom is no more than an expression of sympathy with the congress propaganda It is not itself a criminal offence 140 Ind Cas 497=31 Cr L J 22=1933 Cr C 121=A I R 1933 All 95 but see A I R 1933 Lah 357=34 P L R 923=34 Cr L J 1178=1933 Cr C 631

Power to notify and take possession of places used for the purposes of an unlawful association

*[17A (1) The "Provincial Government"† may, by notification in the "official Gazette",‡ notify any place which in its opinion is used for the purposes of an unlawful association

Explanation—For the purposes of this section 'place' includes a house or building, or part thereof or a tent or vessel

(2) The District Magistrate or in a Presidency-town the Commissioner of Police, or any officer authorised in this behalf in writing by the District Magistrate or Commissioners of Police, as the case may be, may thereupon take possession of the notified place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the "Provincial Government" †

* Inserted by s 13 of Act 23 of 1932

† Substituted by G I Order of 1937 In Burma read the word "Governor", (vide G B Order of 1937)

‡ Substituted by G I Order of 1937 In Burma read the word "Gazette", (vide G B Order of 1937)

Provided that where such place contains any apartment occupied by women or children, reasonable time and facilities shall be afforded for their withdrawal with the least possible inconvenience

(3) A notified place whereof possession is taken under sub-section (2) shall be deemed to remain in the possession of Government so long as the notification under sub-section (1) in respect thereof remains in force

*[17B (1) The District Magistrate, Commissioner of Police or officer taking possession of a notified place shall also take possession of all moveable property found therein and shall make a list thereof in the presence of two respectable witnesses

(2) If, in the opinion of the District Magistrate or in a Presidency-town the Commissioner of Police, any articles specified in the list are or may be used for the purposes of the unlawful association he may proceed subject to the provisions hereafter contained in this section to order such articles to be forfeited to His Majesty

(3) All other articles specified in the list shall be delivered to the person whom he considers to be entitled to possession thereof or, if no such person is found shall be disposed of in such manner as the District Magistrate or Commissioner of Police as the case may be may direct

(4) The District Magistrate or Commissioner of Police shall publish as nearly as may be in the manner provided in section 87 of the Code of Criminal Procedure 1898† for the publication of a proclamation a notice specifying the articles which it is proposed to forfeit and calling upon any person claiming that any article is not liable to forfeiture to submit in writing within fifteen days any representation he desires to make against the forfeiture of the article

(5) Where any such representation is accepted by the District Magistrate or Commissioner of Police he shall deal with the article concerned in accordance with the provisions of sub-section (3)

(6) Where any such representation is rejected, the representation with the decision thereon shall be forwarded to the District Judge in the case of a decision by a District Magistrate, or to the Chief Judge of the Small Cause Court, in the case of a decision by the Commissioner of Police, and no order of forfeiture shall be made until the District Judge or Chief Judge of the Small Cause Court as the case may be has adjudicated upon the representation Where the decision is not confirmed the articles shall be dealt with in accordance with the provisions of sub-section (3)

(7) In making an adjudication under sub-section (6) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure 1908, for the investigation of claims so far as it can be made to apply and the decision of the District Judge or Chief Judge of the Small Cause Court as the case may be shall be final

* Inserted by s. 13 of Act 23 of 1932

† V of 189

be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final

(5) Where the "Provincial Government"* has reason to believe that any person has custody of any monies, securities or credits which are being used or are intended to be used for the purposes of an unlawful association, the "Provincial Government"* may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with the same, save in accordance with the written orders of the "Provincial Government"*. A copy of such order shall be served upon the person to whom it is directed

(6) The "Provincial Government"* may endorse a copy of an order under sub-section (3) for investigation to any officer it may select, and such copy shall be warrant whereunder such officer may enter upon any premises of the person to whom the order is directed, examine the books of such person, search for monies and securities, and make inquiries from such person, or any officer, agent or servant of such person, touching the origin of and dealings in any monies, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purposes of an unlawful association

(7) A copy of an order under this section may be served in the manner provided in the Code of Criminal Procedure, 1898,† for the service of a summons, or, where the person to be served is a corporation company, bank or association of persons, it may be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or association at its registered office, or, where there is no registered office, at the place where it carries on business

(8) Where an order of forfeiture is made under sub-section (1) in respect of any monies, securities or credits in respect of which a prohibitory order has been made under [sub-section (5)],‡ such order of forfeiture shall have effect from the date of the prohibitory order, and the person to whom the prohibitory order was directed shall pay or deliver the whole of the monies, securities, or credits forfeited, to the order of the "Provincial Government"*

(9) Where any person liable under this section to pay or deliver any monies, securities, or credits to the order of the "Provincial Government"* refuses or fails to comply with any direction of the "Provincial Government"* in this behalf, the "Provincial Government"* may recover from such person, as arrears of land-revenue or as a fine, the amount of such monies or credits or the market value of such securities

(10) In this section, 'security' includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of

* Substituted by G I Order of 1937 In Burma read the word ' Governor ' . (vide G I Order of 1937)

† V of 1898

‡ The words within brackets have been substituted by Act 24 of 1934.

(8) If the article seized is livestock or is of a perishable nature the District Magistrate or Commissioner of Police may if he thinks it expedient order the immediate sale thereof, and the proceeds of the sale shall be disposed of in the manner herein provided for the disposal of other articles

*[17C Any person who enters or remains upon a notified place without the permission of the District Magistrate or of an officer authorised by him in this behalf shall be deemed to commit criminal trespass

*[17D Before a notification under sub section (1) of section 17A is cancelled the "Provincial Government"† shall give such general or special directions as it may deem requisite regulating the relinquishment by Government of possession of notified places

*[17E (1) Where the "Provincial Government"† is satisfied, after such inquiry as it may think fit that any monies, securities or credits are being used or are intended to be used for the purposes of an unlawful association the "Provincial Government"† may by order in writing, declare such monies securities or credits to be forfeited to His Majesty

(2) A copy of an order under sub section (1) may be served on the person having custody of the monies, securities or credits, and on the service of such copy such person shall pay or deliver the monies securities or credits to the order of the "Provincial Government"†

Provided that in the case of monies or securities, a copy of the order may be endorsed for execution to such officer as the "Provincial Government"† may select, and such officer shall have power to enter upon and search for such monies and securities in any premises where they may reasonably be suspected to be and to seize the same

(3) Before an order of forfeiture is made under sub section (1) the "Provincial Government"† shall give written notice to the person (if any) in whose custody the monies securities or credits are found of its intention to forfeit and any person from the issue of such notice if in a District or to the Chief Magistrate

or credits or application is of the monies been disposed Small Cause Court has decided that the monies, securities or credits are liable to forfeiture

(4) In disposing of an application under sub section (3) the procedure to be followed shall be the procedure laid down in the Code of Civil Procedure 1908 ‡ for the investigation of claims so far as it can

be made to apply, and the decision of the District Judge or Chief Judge of the Small Cause Court, as the case may be, shall be final

(5) Where the Provincial Government** has reason to believe that any person has custody of any monies, securities or credits which are being used or are intended to be used for the purposes of an unlawful association the "Provincial Government"* may, by order in writing, prohibit such person from paying, delivering transferring or otherwise dealing in any manner whatsoever with the same, save in accordance with the written orders of the "Provincial Government"* A copy of such order shall be served upon the person to whom it is directed

(6) The "Provincial Government" * may endorse a copy of an order under sub section (3) for investigation to any officer it may select, and such copy shall be warrant whereunder such officer may enter upon any premises of the person to whom the order is directed, examine the books of such person search for monies and securities, and make inquiries from such person or any officer agent or servant of such person, touching the origin of and dealings in any monies securities or credits which the investigating officer may suspect are being used or are intended to be used for the purposes of an unlawful association

(7) A copy of an order under this section may be served in the manner provided in the Code of Criminal Procedure 1898† for the service of a summons, or, where the person to be served is a corporation company, bank or association of persons it may be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or association at its registered office, or, where there is no registered office, at the place where it carries on business

(8) Where an order of forfeiture is made under sub-section (1) in respect of any monies securities or credits in respect of which a prohibitory order has been made under [sub-section (5)] ‡ such order of forfeiture shall have effect from the date of the prohibitory order, and the person to whom the prohibitory order was directed shall pay or deliver the whole of the monies, securities or credits forfeited, to the order of the "Provincial Government" *

(9) Where any person liable under this section to pay or deliver any monies, securities or credits to the order of the "Provincial Government"* refuses or fails to comply with any direction of the "Provincial Government"* in this behalf the Provincial Government* may recover from such person as arrears of land-revenue or as a fine the amount of such monies or credits or the market value of such securities

(10) In this section, 'security' includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of

* Substituted by G I Order of 1937 In Burma read the word Governor , (vide G B Order of 1937)

† V of 1898

‡ The words within brackets have been substituted by Act 24 of

money, and the market value of any security means the value as fixed by any officer or person deputed by the "Provincial Government" in this behalf

(11) Except so far as is necessary for the purposes of any proceeding under this section no information obtained in the course of any investigation made under sub section (6) shall be divulged by any officer of Government, without the consent of the "Provincial Government"

†[17F Every report of the taking possession of property and every declaration of forfeiture made or purporting to be made under this Act, shall, as against all persons, be conclusive proof that the property specified therein has been taken possession of by Government or has been forfeited as the case may be and save as provided in sections 17B and 17E no proceeding purporting to be taken under section 17A 17B 17C 17D or 17E shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said sections or against Government or any person acting on behalf of or by authority of Government for any loss or damage caused to or in respect of any property whereof possession has been taken by Government under this Act]

Notes —We have made extensive alteration in the amendments proposed in the Criminal Law Amendment Act 1908 for the hearing of appeals against an the provision for forfeiture should be retained but that in respect of now to be ordered by the District Magistrate or Commissioner of Police instead of by the Local Government should only be ordered after an opportunity has been afforded to the owners of the articles to show either to the officer proposing to forfeit them or to a Judicial officer that they are not liable to forfeiture In the same way with respect to monies and securities we have provided that they shall be released from detention and shall not be forfeited if the owner establishes before a Judicial officer that they are not being used and are not intended to be used for purposes of unlawful association We have also provided that information obtained in the inquiries which may be made during proceedings with a view to seizure and forfeiture shall not be disclosed We have made minor changes in proposed sections 17C and 17E which are self explanatory —*Report of the Select Committee*

18 An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof

THE SCHEDULE *(Repealed by s 3 of Act 5 of 1922)*

* Substituted by G I Order of 1937 But in Burma for those words read the word Governor (vide G B Order of 1937)
† Inserted by s 18 of Act 23 of 1932

THE CRIMINAL LAW AMENDMENT ACT (XXIII OF 1932)

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THE CRIMINAL LAW AMENDMENT ACT, 1932

ACT NO. XXIII OF 1932

(Received the assent of the Governor General on the 19th December, 1932)

An Act to supplement the Criminal Law

WHEREAS it is expedient to supplement the Criminal Law and to that end to amend the Indian Press (Emergency Powers) Act, 1931* and further to amend† the Indian Criminal Law Amendment Act 1908‡ for the purposes hereinafter appearing

Notes —The Civil Disobedience movement or criminal law by means of certain Ordinance exercise of his powers under section 72 of Powers Ordinance which combines powers to the 29th December 1932. Though the Ordinance the officers to control the movement its to paralyse Government and to coerce two years and of previous movements certain of the powers at present exist subversive movements. The conditions prevailing at present as a result of the measures taken by Government necessary to assume for the Powers Ordinance now in (Emergency Powers) Chapter

It is hereby enacted as follows —

Short title extent duration and commencement 1 (1) This Act may be called the Criminal Law Amendment Act, 1932

* XXIII of 1931

† Certain word or words after this have been omitted by the Criminal Law Amendment Act of 1935

‡ XIV of 1908

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) *

(4) The whole of the Act except † section 7 shall come into force at once, and the [Provincial Government]‡ may, by notification in the [official Gazette],§ direct that † section 7 shall come into force in any area on such date as may be specified in the notification

Notes — We are of opinion that the legislation should be of limited duration only. Certain of our members were in favour of limiting its duration to six months but we have fixed the period at three years with the intention that the enactment imputed are brought into at the provisions of the ts in loco of the Indian of many clauses of the —Report of the Select enforcement for 3 years

[Ss 2—4 —*Repealed by the Criminal Law Amendment Act of 1935*]

5 (1) Whoever publishes, circulates or repeats in public any Dissemination of contents of passage from a newspaper, book or other proscribed document document copies whereof have been declared to be forfeited to His Majesty under any law for the time being in force shall be punished with imprisonment for a term which may extend to six months or with fine, or with both

(2) No Court shall take cognizance of an offence punishable under this section unless the [Provincial Government]‡ has certified that the passage published, circulated or repeated contains in the opinion of the [Provincial Government]‡ seditious or other matter of the nature referred to in sub-section (1) of section 99A of the Code of Criminal Procedure 1898,|| or sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931 ¶

Select Committee

[S 6 —*Repealed by the Criminal Law Amendment Act of 1935*]

Molesting a person to prejudice of employment or business

7 (1) Whoever—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing

* Sub section (3) of section 1 has been repealed by Bengal Criminal Law (Amendment) Act of 1935

† Certain word or words after this have been omitted by the Criminal Law (Amendment) Act of 1935

‡ Substituted by G I Order of 1937 But in Burma read the word Governor, (vide G B Order of 1937)

§ Substituted by G I Order of 1937 But in Burma read the word Gazette, (vide G B Order of 1937)

|| V of 1898

¶ XXIII of 1931

obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering, or approaching or dealing at such place,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

Explanation—Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by a police-officer not below the rank of officer in charge of a police-station

Notes—We have substituted for the words any one in whom such person is interested We have made clause (b) more definite by the omission of the last two lines which we replace by the words or does any similar act after loiters, and we have changed the words in such a way or with intent to in such a way and with intent The explanation was added at the suggestion of Mr Jog it emphasises the fact that the section is not intended to hamper lawful advocacy of Swadeshi or abstention from intoxicating liquor Sub section (2) embodies the contents of the first part of clause II of the Bill as introduced —*Report of the Select Committee* The wording of this section is entirely plain

t of the parties disputing
is employed and from

Hence it can be applied

R 318 157 Ind Cas

not in conflict with Trade

l to do certain acts in

acts or criminally for

conspiracy in the furtherance of such acts as Trade Unions Act permits but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offence A I R 1935 Nag 149

A procession through a locality withholds at times for the purpose of distributing the handbills does not amount to loitering so as to amount to an offence under s 7 (I) (b) of Act Loitering to be an offence must be done with the intention of deterring any person from entering or approaching or dealing at the particular place near which the loitering occurs but the loitering for the purpose of distributing handbills is not covered by the section and is not an offence 158 Ind Cas 1008 18 N L J 22=A L R 1935 Nag 19

[S 8—Repealed by the Criminal Law Amendment Act of 1935]

Procedure in offence under the
Act

9 Notwithstanding anything contained in the Code of Criminal Procedure, 1898*—

(i) no Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act,

(ii) an offence punishable under section† 5 or‡ 7 shall be cognizable by the police, and ‡

* V of 1938

† Certain figures or figure after this repealed by the Criminal Law Amendment Act of 1935 have here been omitted

‡ Sub clause (iii) has been omitted by Cr Law Amendment Act of 1935

(iv) an offence punishable under section 7 shall be non-bailable

—Report of the Select Committee.

10 (1) The [Provincial Government]* may, by notification in the [official Gazette],† declare that any offence punishable under section 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable, and thereupon the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly

Power of [Provincial Government]* to make certain offences cognizable and non bailable

(2) The [Provincial Government]* may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under section 188 or section 566 of the Indian Penal Code shall be non-bailable

Notes — 'We have decided that the power to declare an offence non bailable should be given only in the case of sections 188 and 506 of the Indian Penal Code We have effected this by a re draft of the clause —Report of the Select Committee

[Ss 11—14 —Repealed by Act I of 1938]

[S 15 —Repealed by the Criminal Law Amendment Act of 1935]

[S 16 —Repealed by Act I of 1938]

[S 17 — Repealed by the Criminal Law Amendment Act of 1935]

18 Anything done or any proceedings commenced in pursuance of the provisions of Chapter VI of the Special Powers Ordinance, 1932,† shall, upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corresponding provisions of the Indian Criminal Law Amendment Act 1908,§ as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced

Adoption and continuance of action taken under Ordinance X of 1932

19 Anything done or any proceedings commenced in pursuance of the provisions of the Indian Press (Emergency Powers) Act, 1931,|| as amended by section 77 of the Special Powers Ordinance, 1932,† shall, upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corresponding provisions of the Indian Press (Emergency Powers) Act, 1931,|| as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced

Adoption and continuance of action taken under Act XXIII of 1931 as amended by Ordinance X of 1932

[S 20 — Repealed by the Criminal Law Amendment Act of 1935]

But in Burma read the word Governor ',

But in Burma for the e words read the word

of 1909

|| XXIII of 1931.

THE CRIMINAL LAW AMENDMENT ACT, 1935

An Act to amend the Criminal Law

WHEREAS it is expedient to amend the Criminal Law in the manner hereinafter appearing, It is hereby enacted as follows —

Short title and extent 1 (1) This Act may be called the Criminal Law Amendment Act, 1935

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

2 (1) Sub-section (3) of section 1 and sections 2, 3 4, 6, 8 15, 17 and 20 of the Criminal Law Amendment Act, 1932, *are hereby repealed

Repeals

(2) Sub-section (3) of section 1 of the Indian Press (Emergency Powers) Act, 1931 † is hereby repealed

Amendment of Preamble Act
XXIII of 1932

3 In the preamble to the Criminal Law Amendment Act, 1932* the word 'temporarily' shall be omitted

4 In sub section (4) of section 1 of the Criminal Law Amendment Act 1932, * the words and figure 'section 4 and and the words and figure "section 4 or shall be omitted

Amendment of section I Act
XXIII of 1932

Amendment of section 9 Act
XXIII of 1932

5 In section 9 of the Criminal Law Amendment Act, 1932,*—

(a) in clause (ii) the figures '2 , '3 and 6 shall be omitted, and

(b) clause (iii) shall be omitted

6 In sections 11, 12 and 13 of the Criminal Law Amendment Act 1932, * the words 'So long as this Act remains in force', and the words 'deemed to be', shall wherever they occur, be omitted

Amendment of sections 11 12
and 13 Act XXIII of 1932

Amendment of section 32 Act
XXIII of 1931

7 In section 32 of the Indian Press (Emergency Powers) Act, 1931, † the words 'So long as this Act remains in force' shall be omitted

— — — — —
This Bill has been consented to by the Council of State
The 28th September, 1935

M B DADABHOY,
President, Council of State

I assent to this Bill
The 4th October 1935

WILLINGDON
Viceroy and Governor General

— — —

This Act has been made by me as Governor General under the provisions of section 67-B of the Government of India Act
The 4th October 1935

WILLINGDON,
Viceroy and Governor General

— — —

WHEREAS I Freeman, Earl of Willingdon am of opinion that a state of emergency exists which justifies the direction by me that the Criminal Law Amendment Act 1935, being an Act made by me under the provisions of section 67 B of the Government of India Act, shall come into operation forthwith

Now, THEREFORE in exercise of the power conferred by the proviso to sub-section (2) of that section I do hereby direct accordingly
The 17th December 1935

WILLINGDON,
Viceroy and Governor General

— — —

THE PROVINCIAL CRIMINAL LAW SUPPLEMENTARY ACT 1933

ACT NO IX OF 1933

(Received the assent of the Governor-General on the 13th April, 1933)

An Act to supplement the provisions of the Bengal Public Security Act 1932 the Bihar and Orissa Public Safety Act 1933 the Bombay Special (Emergency) Powers Act 1932 the United Provinces Special Powers Act, 1932 and the Punjab Criminal Law (Amendment) Act 1932 for certain purposes

WHEREAS it is expedient to supplement by legislation in the Indian Legislature the provisions of the Bengal Public Security Act 1932*, the Bihar and Orissa Public Safety Act 1933,† the Bombay Special (Emergency) Powers Act, 1932 ‡ the United Provinces Special Powers Act 1932,§ and the Punjab Criminal Law (Amendment) Act 1932|| for the purposes hereinafter appearing It is hereby enacted as follows —

for appeals to the High Court in certain cases and to exclude their jurisdiction in other matters —Statement of Objects and Reasons

Short title

I This Act may be called the Provincial Criminal Law Supplementing Act, 1933

* Ben Act XXII of 1932
 † Bom Act XVI of 1932

‡ B & O Act I of 1933
 § U P Act XIV of 1932

|| Punj Act III of 1932

Appeals

2 (1) An appeal shall lie to the High Court of Judicature at Fort William in Bengal form —

(a) any sentence passed by a Special Magistrate in any trial held under the Bengal Public Security Act, 1932,* in the Presidency town of Calcutta, and

(b) any sentence of imprisonment for a term exceeding 4 years passed by a Special Magistrate in any trial under the said Act held outside the Presidency-town of Calcutta

(2) An appeal under sub-section (1), shall be presented within 30 days from the date of the sentence, and shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code of Criminal Procedure, 1898,† for the hearing of appeal.

Notes —It is not within the power of the local Legislature to pass the legislation necessary for the enactment of sentences passed by Special Magistrate under the local Act has provided left unprovided for by the local Act —

3 Section 15 of the Bihar and Orissa Public Safety Act, 1933 ‡ shall have effect as if these sections had been enacted by the Indian Legislature

Effect of certain sections in provincial Acts section 29 of the Bombay Special (Emergency) Powers Act, 1932 § and section 14 of the United Provinces Special Powers Act 1932,|| shall have effect as if these sections had been enacted by the Indian Legislature

Notes —The three local Acts re enact the provisions contained in section 78 of Ordinance X of 1932 Whereas however section 78 of the Ordinance excluded the jurisdiction of High Courts enactments in the local Acts have no such effect This clause is designed to supplement them in this respect —*Statement of Objects and Reasons*

4 Except as provided in the Bengal Public Security Act, 1932,* as supplemented by this Act, no proceeding or order purporting to be taken or made under the Bengal Public Security Act, 1932,* shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under the said Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under the said Act

Notes —This clause does for section 27 of the Bengal Public Security Act 1932 what clause 3 does for the local Acts therein referred to —*Statement of Objects and Reasons*

5 The powers conferred by section 491 of the Code of Criminal Procedure, 1898,† shall not be exercised in respect of any person arrested, or committed to or detained in custody under the provisions of the Punjab Criminal Law (Amendment) Act, 1932 ‡

Notes —This clause on the analogy of section 491 (3) of the Criminal Procedure Code bars jurisdiction under the powers conferred by that section in respect of action taken under section 2 of the Punjab Criminal Law (Amendment) Act 1932 —*Statement of Objects and Reasons*

6 [Certain Powers of High Court not affected] (Omitted by G. I. Order of 1937)

* Ben Act XXII of 1932

§ Bom Act XXI of 1932

† Act V of 1898

|| U. P. Act XIV of 1932

‡ B & O Act I of 1933

¶ Punj Act III of 1932

THE CRIMINAL TRIBES ACT (VI OF 1924)

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THE CRIMINAL TRIBES ACT, 1924.

ACT NO VI OF 1924.

(Received the assent of the Governor General on the 15th March, 1924)

An Act to consolidate the law relating to Criminal Tribes

WHEREAS it is expedient to consolidate the law relating to criminal tribes, It is hereby enacted as follows —

Preliminary

Short title and extent

1 (1) This Act may be called the Criminal Tribes Act, 1924

[(2) It extends to the whole of British India]*

* Sub section (2) of section 1 has been omitted in Burma (vide G. B. Order of 1937)

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

- (1) "district" includes a Presidency town,*
 (2) 'District Magistrate' means, in the case of a Presidency town,* the Commissioner of Police
 (3) 'prescribed' means prescribed by rules made under this Act and
 (4) 'Superintendent of Police' means in the case of a Presidency-town* any officer appointed by the [Provincial Government]† to perform the duties of a Superintendent of Police under this Act

Notification of Criminal Tribes

3 If the [Provincial Government]‡ has reason to believe that any tribe, gang or class of persons, or any part of a tribe, gang or class, is addicted to the systematic commission of non bailable offences, it may by notification in the [official Gazette,]‡ declare that such tribe, gang or class or as the case may be that such part of the tribe, gang or class is a criminal tribe for the purposes of this Act

Power to declare any tribe gang or class a criminal tribe

Notes —The intention of this section is to give power to Provincial Governments to declare a tribe to be criminal and thereafter to register their members to take finger prints and generally put the tribe under restrictions —Notes on Clauses

Registration of Members of Criminal Tribes

4 The [Provincial Government]‡ may direct the District Magistrate to make or to cause to be made a register of the members of any criminal tribe, or part of a criminal tribe within his district

Registration of members of criminal tribes

member of the acts for still he has (a) to (f) evidence as 44 C L J 213

5. Upon receiving such direction, the District Magistrate shall publish notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of the criminal tribe or part as the case may be,—

(a) to appear at a time and place therein specified before a person appointed by him in this behalf

* After this the words and the town of Rangoon or or the town of Rangoon have been omitted in British India by G I Order of 1937 In Burma read sub section (1) of section 1 as district includes the town of Rangoon sub section (2) as District

† Substituted by G I Order of 1937 But in Burma read the word Governor (vide G B Order of 1937)

‡ Substituted in British India by G I Order of 1937 In Burma for these words read the word Gazette (vide G B Order of 1937)

(b) to give to that person such information as may be necessary to enable him to make the register ; and

(c) to allow their finger-impressions to be recorded

Provided that the District Magistrate may exempt any member from registration and may cancel any such exemption.

6 The register, when made, shall be placed in the keeping of the

Charge of register. Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure

7. (1) After the register has been placed in the keeping of the

Alterations in register Superintendent of Police, no person's name shall be added to the register, and no registration shall be cancelled, except by, or under an order in writing of, the District Magistrate

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned—

(a) to appear before him or an authority appointed by him in this behalf at a time and place therein specified ,

(b) to give to him or such authority such information as may be necessary to enable the entry to be made , and

(c) to allow his finger impressions to be recorded.

8 Any person deeming himself aggrieved by any entry made, or

Complaints of entries in register proposed to be made, in such register, either when the register is first made or subsequently, may complain to the District

Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein or erase it therefrom, as he may think fit

9 The District Magistrate or any officer empowered by him in this

Power to take finger impressions at any time behalf may at any time order the finger impressions of any registered member of a criminal tribe to be taken

Notes —This section gives specific power to take fresh finger impressions which will often be necessary although first impression can be taken under sections 5 and 7.—Notes on Clauses

*[10 (1) The [Provincial Government]† may, by notification in the

Members of criminal tribes to report themselves or notify residence [official Gazette] ‡ issue in respect of any criminal tribe either or both of the following directions, namely, that every registered member thereof shall, in the prescribed manner,

(a) report himself at fixed intervals ,

(b) notify his place of residence and any change or intended change of residence, and any absence or intended absence from his residence

* Section 10 has been re numbered as sub section (1) of section 10 and sub sections (2) and (3) have been added by Act 23 of 1925

† Substituted by G. I. Order of 1937. In Burma for the words 'Provincial Government' read 'Governor' (vide G. B. Order of 1937)

‡ Substituted by G. I. Order of 1937. In Burma read the word "Gazette", (vide G. B. Order of 1937)

(2) Where a registered member of a criminal tribe in respect of which the [Provincial Government]* has issued a notification under sub-section (1) changes his place of residence to a District other than that in which he has been registered [(whether in the same province or not), or is for the time being in a district of a province other than that by the [Provincial Government]* of which the said notification was issued,]† the provisions of this Act and of the rules made thereunder shall apply to him as if in pursuance of a direction made under section 4 he had been registered in that district, [and where that district is in a province other than that by the Provincial Government]* of which the notifications under section 3 and sub-section (1) of this section were issued in respect of such criminal tribe as if the said notifications had been issued by the "Provincial Government * of such other province] †

(3) Where any such registered member changes his place of residence to a district other than that in which he has been registered [whether in the same province or not],† the relevant entry in the register shall be transferred to the Superintendent of Police of that district

Registration of movements of Criminal Tribes

11 (1) If the [Provincial Government]* considers that it is expedient that any criminal tribe, or any part or member of a criminal tribe, should be—

Power to restrict movements of
or settle criminal tribes

(a) restricted in its or his movements to any specified area, or
(b) settled in any place of residence the [Provincial Government]* may, by notification in the [official Gazette]‡ declare that such criminal tribe part or member as the case may be, shall be restricted in its or his movements to the area specified in the notification or shall be settled in the place of residence so specified, as the case may be

(2) Before making any such declaration, the [Provincial Government]* shall consider the following matters, namely —

(i) the nature and the circumstances of the offences in which the members of the criminal tribe or part or the individual member, as the case may be are or is believed to have been concerned

(ii) whether the criminal tribe, part or member follows any lawful occupation, and whether such occupation is a real occupation or merely a pretence for the purpose of facilitating the commission of crimes,

(iii) the suitability of the restriction area or of the place of residence as the case may be which it is proposed to specify in the notification, and

(iv) the manner in which it is proposed that the persons to be

* In British India the words 'Provincial Government' have been substituted by G I Order of 1937. In Burma for the words 'Provincial Government' read 'Governor'— vide G B Order of 1937

† The words within brackets have been omitted in Burma (vide G B Order of 1937)

‡ In British India the words 'official Gazette' have been substituted by G I Order of 1937. In Burma read the word 'Gazette', (vide G B Order of 1937)

restricted or settled shall earn their living within the restriction area or in the place of residence, and the adequacy of the arrangements which are proposed therefor

12 The [Provincial Government]* may by a like notification vary the terms of any notification issued by it under section 11 for the purpose of specifying another restriction area or another place of residence, as the case may be and any officer empowered in this behalf by the [Provincial Government]* may, by order in writing, vary any notification made under section 11 or under this section for the purpose of specifying another restriction area or as the case may be another place of residence, in the same district

†[**13** Any notification made by the [Provincial Government]* under section 11 or section 12 may specify as the restriction area or as the place of residence an area or place situated in any other province, provided that the consent of the "Provincial Government"* of that province shall first have been obtained]

14 Every registered member of a criminal tribe, whose movements have been restricted or who has been settled in a place of residence in pursuance of any notification under section 11 or section 12, shall attend at such place and at such time and before such person as may be prescribed in this behalf

15 †(1) Where in pursuance of any such notification any member of a criminal tribe is restricted in his movements to an area, or is settled in a place of residence situated in a province other than that by the [Provincial Government]* of which the notification under section 3 relating to the criminal tribe was issued, all the provisions of this Act and the rules made thereunder shall apply to him as if the notification under section 3 had been issued by the [Provincial Government]* of such other province

(2) If any criminal tribe or any part of a criminal tribe, which has been registered under section 4 in any district, or any member of such tribe or part, is restricted in its or his movements to an area, or is settled in a place of residence, situated in another district [whether in the same province or not] § the register or as the case may be, the relevant entries or entry therein shall be transferred to the Superintendent of Police of the last mentioned district, and all the provisions of this Act and the rules made thereunder shall apply as if the criminal tribe or part had been registered in that district, and the District

* The words Provincial Government have been substituted in British India by G I Order of 1937 In Burma for these words read the word Governor (vide G B Order of 1937)

†
:
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B O . . .

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G B Order of 1937
omitted in Burma by G

Magistrate of that district shall have power to cancel any exemption granted under section 5

Settlements and Schools

16 The [Provincial Government]* may establish industrial agricultural or reformatory settlements and may order to be placed in any such settlement any criminal tribe, or any part or member of a criminal tribe in respect of which or of whom a notification has been issued under section 11

Provided that no such order shall be made unless the necessity for making it has been established to the satisfaction of the [Provincial Government]* after an inquiry held by such authority and in such manner as may be prescribed

17 (1) The [Provincial Government]* may establish industrial, agricultural or reformatory schools for children, and may order to be separated and removed from their parents or guardians and to be placed in any such school or schools the children of members of any criminal tribe or part of a criminal tribe in respect of which a notification has been issued under section 11

(2) For every school established under sub section (1), a Superintendent shall be appointed by the [Provincial Government]*

(3) The provisions of sections 18 to 22 of the Reformatory Schools Act 1897 shall so far as may be apply in the case of every school for children, established under this section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act

(4) For the purposes of this section the term 'children' includes all persons under the age of eighteen and above the age of six years

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final

Or guardians have been added after parents
unable to remove children whose parents are dead
the children of such tribes only as have under
in Council been restricted to a specified area or

settled in a place of residence —Notes on Clauses

18 The [Provincial Government]* or any officer authorised by it in this behalf may at any time by general or special order direct any person who may be in any industrial agricultural or reformatory settlement or school in [the province]†—

(a) to be discharged or

(b) to be transferred to some other settlement or school in the province

* The words 'Provincial Government' have been substituted in British India by G.O. Order of 1937. In Burma for these words read 'Governor' —S.I. C.B. Order of 1937

† In Burma for the words 'the province' read the words 'British Burma' (vide G.O. Order of 1937)

(k) the inspection of the residences and villages of any criminal tribe ;

(l) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act ,

(m) the management, control and supervision of industrial, agricultural or reformatory settlements and schools ,

(n) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour , and

(o) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove

Penalties and Procedure

Penalties for failure to comply with terms of notice under section 5 or section 7

21 Whoever, being a member of a criminal tribe without lawful excuse, the burden of proving which shall lie upon him,—

(a) fails to appear in compliance with a notice issued under section 5 or section 7 or

(b) intentionally omits to furnish any information required under either of those sections, or

(c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false or

(d) refuses to allow his finger-impressions to be taken by any person acting under an order passed under section 9, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees or with both

22 (1) Whoever, being a registered member of a criminal tribe, contravenes a rule made under clause (e), clause (g) or clause (h) of section 20 shall be punishable with imprisonment for a term which may extend —

(a) on a first conviction, to one year

(b) on a second conviction, to two years and

(c) on any subsequent conviction to three years

or with fine which may extend to five hundred rupees or with both

(2) Whoever, being a registered member of a criminal tribe contravenes any other rule made under section 20 shall be punishable,—

(a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both , and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both

*[19 Any order made under section 16 section 17 or section 18 may specify as the settlement or school in which any person is to be placed or to which he is to be transferred as the case may be, any industrial agricultural or reformatory settlement or school in any other province, provided that the consent of the [Provincial Government]† of that province shall first have been obtained

Power to direct use of any settlement or school in British India for reception of persons

Rules

Power to make rules 20 (1) The [Provincial Government]† may make rules to carry out the purposes and objects of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate—

(a) the form and contents of the register referred to in section 4
(b) the manner in which the notice referred to in section 5 shall be published and the means by which the persons whom it concerns, and the village-headmen, [village watchmen]‡ and landowners and occupiers of the village in which such persons reside, and the agents of such landowners or occupiers shall be informed of its publication

(c) the addition of names to the register and the erasure of names therein, and the mode in which the notice referred to in subsection (2) of section 7 shall be given

(d) the manner in which persons mentioned in section 10 shall report themselves or notify their residence or any change or intended change of residence, or any absence or intended absence

(e) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 11 or section 12

(f) the circumstances in which members of a criminal tribe shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted

(g) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined, or the area to which their movements are restricted,

(h) the conditions to be inserted in any such pass in regard to—
(i) the places where the holder of the pass may go or reside
(ii) the persons before whom, from time to time, he shall be bound to present himself and

(iii) the time during which he may absent himself
(i) the place and time at which, and the persons before whom, members of a criminal tribe shall attend in accordance with the provisions of section 14

(j) the authority by whom and the manner in which the inquiry referred to in section 16 shall be held

† Or
‡

the words 'village watchmen'

uted in British India by G
—the G B Order of 1937
(rule C B Order of 1937)

(k) the inspection of the residences and villages of any criminal tribe ;

(l) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act ,

(m) the management, control and supervision of industrial, agricultural or reformatory settlements and schools ,

(n) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour , and

(o) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure

Penalties for failure to comply with terms of notice under section 5 or section 7

21 Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him,—

(a) fails to appear in compliance with a notice issued under section 5 or section 7, or

(b) intentionally omits to furnish any information required under either of those sections, or

(c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

(d) refuses to allow his finger-impressions to be taken by any person acting under an order passed under section 9, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both

22 (1) Whoever, being a registered member of a criminal tribe, contravenes a rule made under clause (e), clause (g) or clause (h) of section 20 shall be punishable with imprisonment for a term which may extend,—

(a) on a first conviction, to one year,

(b) on a second conviction, to two years, and

(c) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both

(2) Whoever, being a registered member of a criminal tribe, contravenes any other rule made under section 20 shall be punishable,—

(a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both , and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both

Notes — *Vide* 46 A 114, 50 A 718, 56 Ind Cas 226 35 Cr L J 1303

Enhanced punishment for certain offences by members of criminal tribe after previous conviction

(b) on a third or any subsequent conviction, with transportation for life

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

Previous conviction—A second conviction need not be second conviction after the Act nor is it necessary that it would be the second in fact. Taking the conviction or convictions prior to the Act as one constituting one group of convictions the first one after the Act would be the second conviction. A third conviction must be at least the second after the Act. 45 B 1092 40 M 923. This section is not confined merely to offences that

Mad 466 Any member of a tribe which has been notified under s 8 having previous conviction can be awarded enhanced punishment in a conviction after the date of the notification 14 A L J 687=17 Cr L J 463 This section applies even where the tribe was not so notified at the time of previous conviction if it has been notified at the time of the second conviction 35 Ind Cas 824 This section refers only to convictions for offences specified in Schedule I The words the same or any other such offence mean one of the offences mentioned in the Schedule 34 Cr L J 143=34 Cr L J 450=146 Ind Cas 789=A I R 1933 All 115=1932 A L J 1070 The three convictions required before the provisions of s 23 (1) (b) came into operation need not be convictions after the accused has been a member of a criminal tribe and if the accused is convicted of scheduled offences before he has become a member of a criminal tribe these must be counted against him 30 S L R 100=164 Ind Cas 95=37 Cr L J 948=1936 Cr C 675=A I R 1936 Sind 91

The words 'second conviction' have reference to the words in the sentence 'is hereafter convicted' and not to the earlier words 'having been convicted'. The first conviction must be of the scheduled offence. The second conviction cannot be taken to mean second after notification. 32 M L J 212 = 17 Cr L J 149, see also 16 A L J 383 = 45 Ind Cas 513. Where the accused's previous convictions were under sections 457 and 383 or 411 I P Code the view most favourable to the accused should be taken and for purposes of enhanced punishment the previous convictions (1) of the 'ad 978 The last sentence 57 M L J nitive offence. A conviction need not be under this section. A I R 1928 All 551. Long period of good behaviour is special reason and minimum sentence provided by s. 23 need not be

passed A I R 1931 Bom 20. Good conduct of accused after offence affords some extenuation in punishment A I R 1933 Oudh 420 For the application of s 23 (1)(b) it is not necessary that both the second and third convictions should be convictions after the tribe to which the accused belongs had been declared a criminal tribe or after the accused was registered a member of the criminal tribe The mere fact that an offence is not of a very serious nature cannot form a special reason for reducing the sentence Such special reason must be something apart from the nature of the offence such as youth or age or illness or sex 51 M L J 495—A I R 1926 Mad 1100

Punishment for registered members of criminal tribe found under suspicious circumstances

24 Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court,—

(a) that he was about to commit or aid in the commission of, theft or robbery, or

(b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees

Notes—Where it is clear from the statement of the accused that he had no real defence a charge can be framed on that statement and he can be convicted under s 22 if not under this section *Jaun Bahar v Emperor* 17 Cr L J 73 Where all the evidence against the accused was that he was found near a pond and that he had a pair of scissors and a box of matches *Held* that the facts did not make out that the accused was waiting for an opportunity to commit theft or robbery and that a conviction under s 24 (b) was not sustainable 108 Ind Cas 901=29 Cr L J 453 51 M L J 444

Arrest of registered person found beyond prescribed limits

25 (1) Whoever, being a registered member of a criminal tribe,—

(a) is found in any part of [British India]* beyond the area or place of residence if any to which his movements have been restricted or in which he has been settled without the prescribed pass or in a place or at a time not permitted by the conditions of his pass, or

(b) escapes from an industrial, agricultural or reformatory settlement or school

may be arrested without warrant by any police officer, [village-headman or village-watchman,]* and may be taken before a Magistrate who, on proof of the facts, shall order him to be removed to such area or place or to such settlement or school, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act

Provided that an order from the [Provincial Government]† or from the Inspector-General of Prisons shall not be necessary for the removal of such persons

Notes—Where the accused who was a member of a criminal tribe was ordered to be placed in the Sholapur Settlement and was subsequently released on probation and allowed

* In Burma for the words 'British India' read 'British Burma' and for the word 'village headman or village watchman' read the words 'or village headman' (rule G of Order of 1937)

† The words 'Provincial Government' have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor' (rule C. B. Order of 1937)

to go to Bombay, but later the criminal tribes settlement officer ordered the accused's probation to be cancelled for misconduct and the accused was ordered to return to the

29 Bom L R 186 = A I R 1927 Bom 159

26 (1) Every village-headman [and village-watchman]* in a village in which any members of a criminal

Duties of village headmen, village-watchmen and owners or occupiers of land to give information in certain cases

tribe reside, and every owner or occupier of land on which any such persons reside, and the agent of any such owner or occupier, shall forthwith communicate to

the officer-in-charge of the nearest police-station any information which he may obtain of—

(a) the failure of any such person to appear and give information when required to do so by a notice issued under section 5, or

(b) the departure of any registered member of a criminal tribe from such village or from such land, as the case may be

(2) Every village-headman [and village-watchman]* in a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any persons who may reasonably be suspected of being members of any criminal tribe

Notes—It is obligatory under this section on every occupier of land to communicate to the nearest police station information of arrival on his land of any member of criminal tribe. But he must have reasonable time to give such information. 39 Ind. C.A. 954

27. Any village-headman, [village-watchman],* owner or occupier

Penalty for breach of such duties

of land, and the agent of any such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed

to have committed an offence punishable under the first part of section 176 of the Indian Penal Code

Notes—When any village-headman or village watchman fails to report he is presumed to intend to conceal it. 27 Ind. C.A. 843

†[28 The [Provincial Government,]† if it is satisfied that adequate provision has been made by the law of

Power to deport certain criminal tribes to States in India

any State in India for the restriction of the movements or the settlement in a

place of residence of persons such as are referred to in section 3, and for securing the welfare of persons so restricted or settled, may, with the consent of the Prince or Chief of that State, direct the removal to that State of any criminal tribe, or part of a criminal tribe, for the time

* In Burma the words "and village-watchman" and "village-watchman" have been

being in the province, and may authorise the taking of all measures necessary to effect such removal,

Provided that no person shall be so removed if the [Provincial Government]* is satisfied that he is a subject of His Majesty

Notes—The object of this section is to provide for the transfer of criminal tribes from British India to Indian States. It is considered desirable for the reasons for which it is

that adequate provision has been made for the restriction of settlement of criminal tribes —
Notes on Clauses

Supplemental

29 No Court shall question the validity of any notification issued under section 3, section 11, or section 12, on the ground that the provisions hereinbefore contained or any of them have not been complied with, or shall entertain in any form whatever the question whether they have been complied with, but every such notification shall be conclusive proof that it has been issued in accordance with law.

N No Court can enter into question as to whether application of s 3 is justifiable, R 1932 Pat 155

Repeals] *Repealed by the Repealing Act, 1927 (XII of 1927)*

SCHEDULE I

(See section 23)

CHAPTER XII

coin
 Queen's coin
 instrument for counterfeiting coin
 instrument for counterfeiting Queen's coin
 instrument or material for the purpose of using the same for
 assessed with the knowledge that it is counterfeit
 coin possessed with the knowledge that it is counterfeit
 counterfeit coin by a person who knew it to be counterfeit when he
 of
 coin by a person who knew it to be counterfeit when he
 of

CHAPTER XXI

299

307 Att

308 Att

310 Be

322 V

324 Vo

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327 Volu

328 Causu

murder

by dangerous weapons or means

by dangerous weapons or means

to extort property or to constrain to an illegal act
 of poison etc., with intent to commit an offence

* In British India the words 'Provincial Government' have been substituted by C I Order of 1937. In Burma for these words read the word 'Governor', (rule G B Order of 1937)

329	Voluntarily causing grievous hurt to extort property or to constrain to an illegal act
332	
333	
369	

CHAPTER XVII

382	Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft
383	Extortion
385	
386	
387	
390	Robbery
391	Dacoity
393	Attempt to commit robbery
394	Voluntarily causing hurt in committing robbery
397	Robbery or dacoity with attempt to cause death or grievous hurt
398	Attempt to commit robbery or dacoity when armed with deadly weapon
399	
402	
457	
458	
459	assault or wrongful restraint
460	Grievous hurt caused whilst committing lurking house trespass or house breaking
460	All persons jointly concerned in lurking house trespass or house breaking by night punishable where death or grievous hurt caused by one of them

[SCHEDULE II] Repealed by the Repealing Act, 1927 (XII of 1927)

THE DANGEROUS DRUGS ACT (II OF 1930)

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SCHEDULE II—Amendments of local Acts.

THE DANGEROUS DRUGS ACT, 1930

ACT NO II OF 1930

(Received the assent of the Governor General on the 1st March, 1930)

AN ACT to centralise and vest in the Governor General in Council the control over certain operations relating to dangerous drugs and to increase and render uniform throughout British India the penalties for offences relating to such operations

WHEREAS India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations dated the 27th day of September, 1923 met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925 adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention),

AND WHEREAS India was a State signatory to the said Geneva Convention,

AND WHEREAS the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention,

AND WHEREAS for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralised, and vested in the Governor General in Council,

AND WHEREAS it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that

all penalties relating to certain operations should be rendered uniform throughout [British India] * It is hereby enacted as follows —

Notes — In view of the obligations undertaken by the Government of India by ratifying the Geneva Dangerous Drugs Convention 1925 and the existing confusion of the laws to enact
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The subject matter of the Bill is one that under the Devolution Rules is partly provincial but the Local Governments have assented to the subject in view of the special advantages of such addition to centralising and vesting in the Government certain operations relating to Dangerous Drugs some cases increases the penalties for certain
Statement of Objects and Reasons

CHAPTER I PRELIMINARY

Short title extent and commencement 1 (1) This Act may be called the Dangerous Drugs Act, 1930

[(2) It extends to the whole of British India including British Baluchistan and the Sonthal Paraganas]†

(3) It shall come into force on such date as the [Central Government]‡ may by notification in the [official Gazette]§ appoint

Definitions 2 In this Act unless there is any thing repugnant in the subject or context,—

(a) 'coca leaf' means—

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lam.) and the *Erythroxylon novo granatense* (Hiern) and their varieties, and of any other species of this genus which the [Central Government]‡ may, by notification in the [official Gazette],§ declare to be coca plants for the purposes of this Act, and

(ii) any mixture thereof with or without neutral materials but does not include any preparation containing not more than 0.1 per cent of cocaine

(b) 'coca derivative' means —

(i) crude cocaine, that is any extract of coca leaf which can be used directly or indirectly for the manufacture of cocaine

(ii) ecgonine, that is, lævo ecgonine having the chemical formula $C_8H_{11}NO_3 \cdot H_2O$ and all the derivatives of lævo ecgonine from which it can be recovered

(iii) cocaine that is methyl benzoyl lævo ecgonine having the chemical formula $C_{17}H_{21}NO_4$, and its salts and

* In Burma for the words British India read British Burma —Vide G B Order of 1937

† In Burma sub-section (c) has been omitted by G B Order of 1937

‡ The words Central Government have been substituted in British India by G B Order of 1937 In Burma for these words read the word Governor —Vide G B Order of 1937

§ In British India the words official Gazette have been substituted by G B Order of 1937 In Burma read the word Gazette for these words —Vide G B Order of 1937

(iv) all preparations, officinal and non-official, containing more than 0.1 per cent. of cocaine,

(c) "hemp" means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as *bhāng*, *siddhi*, or *ganja*,

(ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport, and

(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom,

(d) "medicinal hemp" means any extract or tincture of hemp,

(e) "opium" means—

(i) the capsules of the poppy (*Papaver somniferum* L.),

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport, and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium

but does not include any preparation containing not more than 0.2 per cent. of morphine,

(f) "opium derivative" means—

(i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopœia, whether in powder form or granulated or otherwise or mixed with neutral materials,

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_3$, and its salts

(iv) diacetylmorphine, that is, the alkaloid, also known as diamorphine or heroin having the chemical formula $C_{21}H_{23}NO_5$, and its salts, and

(v) all preparations, officinal and non-official, containing more than 0.2 per cent. of morphine or containing any diacetylmorphine,

(g) "manufactured drug" includes—

(i) all coca derivatives, medicinal hemp and opium derivatives, and

(ii) any other narcotic substance which the 'Central Government' * may by notification in the 'official Gazette' † made in pursuance of a recommendation under Article 10 of the Geneva Convention, or in pursuance of any international convention supplementing the Geneva Convention † declare to be a manufactured drug,

but does not include any preparation which the 'Central Government' * may, by notification in the 'official Gazette' † made in pursu-

* The words within quotations have been substituted by G. I. Ord. r. of 1937. But in Burma read the word 'Government' for the word "Central Government" and 'Gazette' for the words "official Gazette" respectively.—vide G. B. Ord. r. of 1937.

† Inserted by Act 26 of 1933.

CHAPTER II

PROHIBITION AND CONTROL

Prohibition of certain operations

4 (1) No one shall—

(a) cultivate any coca plant, or gather any portion of a coca plant,

(b) manufacture or possess prepared opium unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or

(c) import into [British India]* export from [British India,]* tranship or sell prepared opium

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of the Crown †

“(2) The [Provincial Government] ‡ may make rules restricting and regulating the manufacture and possession of prepared opium from opium which is lawfully possessed under clause (b) of sub-section (1) §

Notes — We have amended sub clause (b) so as not to penalize the preparation of

debarred from having indulgent supplies of this valuable drug for proper medicinal uses
The same proviso is added consequently to clause 9 — *Statement of Objects and Reasons*

Control of [Central Government]|| over production and supply of opium

5 (1) No one shall—

(a) cultivate the poppy (*Papaver somniferum* L.) or

(b) manufacture opium,

save in accordance with rules made under sub section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Central Government] - - - - - and
regulating the cultivation and the
manufacture of opium and
conditions of licences for such cultivation and manufacture, the autho-

* In Burma for the words British India read British Burma — *Vide G. B. Order of 1937*

† In British India the words the Crown have been substituted by G. I. Order of 1937 (vide G. B. Order of 1937)
have been substituted by G. I. Governor (vide G. B. Order of

4 (1) and sub section (c) has been

† have been substituted by G. I. Governor (vide G. B. C

rities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the [Central Government]* over such cultivation and manufacture.

(3) The [Central Government]* may also make rules permitting and regulating the sale of opium from Government factories for export or [to "Provincial Governments"†]‡ or to manufacturing chemists.

6 (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Central Government]* may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matter requisite to render effective the control of the [Central Government]* over such manufacture

(3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess

Control of [Central Government]* over operations at land and sea frontiers

7 (1) No one shall—

- (a) import into [British India,]§
- (b) export from [British India,]§ or
- (c) tranship

any dangerous drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Central Government]* may make rules permitting and regulating the import into and export from [British India]§ and the transhipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported, or transhipped, the form and conditions of licences for such import, export or transhipment, the autho-

* In British India the words "Central Government" have been substituted by G I Order of 1937. In Burma for these words read the word "Governor", vide G B Order of 1937.

† In British India the words "Provincial Governments" have been substituted by G I Order of 1937. In Burma for these words read the words "Governors", (vide G B Order of 1937)

‡ In Burma the words within brackets have been omitted. (vide G B Order of 1937)
§ In Burma for the words "British India" read "British Burma", (vide G B Order of 1937)

rities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the [Central Government]* over such import, export and transhipment

Control of [Provincial Govern-
ment]† over internal traffic in
manufactured drugs and coca
leaf

8 (1 No one shall—

(a) [import or export inter-provincially]‡ transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine, or cocaine,

save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Provincial Government]† may§ make rules permitting and regulating—

(a) [the inter provincial import and export into and from the territories under its administration,]‡ the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf, and

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess

Such rules may prescribe the form and conditions of licences for such [import export]‡, transport possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matters requisite to render effective the control of the [Provincial Government]† over such [import, export] ‡ transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the [Provincial Government]† under this section, is not entitled to their possession

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intended to apply to
properly come under

* In British India the words 'Central Government' have been substituted by G. I Order of 1937. In Burma for these words read the words 'Governor', (vide G. B Order of 1937)

† In British India the words 'Provincial Government' have been substituted by G. I Order of 1937. In Burma for these words read the word 'Governor' (vide G. B Order of 1937)

‡ In Burma the words within brackets have been omitted by G. B Order of 1937

§ In British India the words 'subject to the control of the Governor General' in Council have been omitted by G. I Order of 1937

rities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the [Central Government]* over such cultivation and manufacture

(3) The [Central Government]* may also make rules permitting and regulating the sale of opium from Government factories for export or [to "Provincial Governments †]‡ or to manufacturing chemists

6 (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2 and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Central Government]* may make rules permitting and regulating the manufacture of manufactured drugs other than prepared opium and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor and any other matter requisite to render effective the control of the [Central Government]* over such manufacture

(3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess

Control of [Central Government]* over operations at land and sea frontiers

7 (1) No one shall—

- (a) import into [British India,]§
- (b) export from [British India,]§ or
- (c) tranship

any dangerous drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Central Government]* may make rules permitting and regulating the import into and export from [British India]§ and the transhipment of dangerous drugs, other than prepared opium and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported exported, or transhipped, the form and conditions of licences for such import, export or transhipment the autho-

* In British India the words "Central Government" have been substituted by C I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† In British India the words "Provincial Governments" have been substituted by G I Order of 1937 In Burma for these words read the words "Governors" (vide G B Order of 1937)

§ In Burma the words within brackets have been omitted (Vide G B Order of 1937)
§ In Burma for the words "British India" read "British Burma" (vide G B Order of 1937)

rities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the [Central Government]* over such import, export and transshipment

Control of [Provincial Government]† over internal traffic in manufactured drugs and coca leaf

8 (1 No one shall—

(a) [import or export inter-provincially]‡ transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine, or cocaine save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules

(2) The [Provincial Government]‡ may§ make rules permitting and regulating—

(a) [the inter provincial import and export into and from the territories under its administration,]‡ the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf, and

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess

Such rules may prescribe the form and conditions of licences for such [import, export]‡, transport, possession sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor and any other matters requisite to render effective the control of the [Provincial Government]‡ over such [import, export] ‡ transport, possession, sale and manufacture

(3) Save in so far as may be expressly provided in rules made under sub-section (2) nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the [Provincial Government]‡ under this section, is not entitled to their possession

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* In British India the words 'Central Government' have been substituted by G I Order of 1937 In Burma for these words read the words Governor (vide G B Order of 1937)

† In British India the words 'Provincial Government' have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor', (vide G B Order of 1937)

‡ In Burma the words within brackets have been omitted by G B Order of 1937

§ In British India the words 'subject to the control of the Governor General in Council' have been omitted by G I Order of 1937

9 No one shall engage in or control any trade whereby a dangerous drug is obtained outside [British India]† and supplied to any person outside [British India],† save in accordance with the conditions of a licence granted by and at the discretion of the [Provincial Government]*

Notes — We have inserted this clause in order that Local Governments may have some control over traffic in dangerous drugs where the persons promoting the traffic have their head quarters in British India but the traffic itself lies entirely outside British India. Such a case would arise where a merchant in Bombay arranges with opium suppliers in Persia for the despatch of opium in China — *Statement of Objects and Reasons*

CHAPTER III

OFFENCES AND PENALTIES

Punishment for contravention of section 4

10 Whoever—

(a) cultivates any coca plant or gathers any portion of a coca plant,

(b) manufactures or possesses prepared opium otherwise than as permitted under section 4 or

(c) imports into [British India]† exports from [British India]†, tranships or sells prepared opium shall be punished with imprisonment which may extend to two years or with fine, or with both

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of [the Crown]†

Notes — We have made two amendments consequential on the amendment made in clause 4. We also propose that for offences under clauses 10 and 11 the fine should be unlimited as in clauses 12, 13, 14 and 15. The offences under clauses 10 and 11 may be very serious and we think the Courts should be given power to award heavy fines in very bad cases* — *Statement of Objects and Reasons*. Opium does not include *benisu* and *beetel* :—145 Ind. Cas. 825—A I R. 1938 Rang. 258

Proviso — *Vide* notes on sect. on 4

Punishment for contravention of section 5

11 Whoever in contravention of section 5 or any rule made under that section or of any condition of a licence granted thereunder,

(a) cultivates the poppy or

(b) manufactures opium,

shall be punished with imprisonment which may extend to two years or with fine, or with both

* In British India the words Provincial Government have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor — *Vide* G. I. Order of 1937

† In British India —

Vide 1937

sh. Burma —

G. I. Order of 1937

12 Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine or with both

Punishment for contravention of section 6

Punishment for contravention of section 7

13 Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into [British India] *
- (b) exports from [British India],* or
- (c) tranships

any dangerous drug shall be punished with imprisonment which may extend to two years, or with fine, or with both

Punishment for contravention of section 8

14 Whoever in contravention of section 8, or any rule made under that section or any condition of a licence issued thereunder,

(a) [imports or exports inter-provincially]†, transports, possesses or sells any manufactured drug or coca leaf, or

(b) manufactures medicinal opium or any preparations containing morphine, diacetylmorphine or cocaine,

shall be punished with imprisonment which may extend to two years, or with fine, or with both

15 Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permits it to be used for the commission by any other person of an offence punishable under section 10, section 12, section 13, or section 14, shall be punished with imprisonment which may extend to two years, or with fine, or with both

Punishment for allowing premises to be used for the commission of an offence

Notes — As clause 10 relates to the serious offences of the manufacture import export and sale of prepared opium we consider it should be included within the category given in these clauses. The references in these clauses have been re numbered —*Statement of Objects and Reasons*

16 Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, or section 14, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both

Enhanced punishment for certain offences after previous conviction

Notes—*Vide* notes under section 15

* In British Burma for the words "British India" read the words "British Burma" vide G. B. Order of 1937

† In Burma the words within brackets have been omitted by G. B. Order of 1937

9 No one shall engage in or control any trade whereby a dangerous drug is obtained outside [British India]† and supplied to any person outside [British India]† save in accordance with the conditions of a licence granted by and at the discretion of the [Provincial Government]*

Control of [Provincial Government]* over external dealings in dangerous drugs

Notes — We have inserted this clause in order that Local Governments may have some control over traffic in dangerous drugs where the persons promoting the traffic have their head quarters in British India but the traffic itself lies entirely outside British India. Such a case would arise where a merchant in Bombay arranges with opium suppliers in Persia for the despatch of opium in China — *Statement of Objects and Reasons*

CHAPTER III

OFFENCES AND PENALTIES

Punishment for contravention of section 4

10 Whoever —

(a) cultivates any coca plant or gathers any portion of a coca plant,

(b) manufactures or possesses prepared opium otherwise than as permitted under section 4 or

(c) imports into [British India]†, exports from [British India]†, tranships or sells prepared opium, shall be punished with imprisonment which may extend to two years or with fine or with both

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of [the Crown]†

Notes — We have made two amendments consequential on the amendment made in clause 4. We also propose that for offences under clauses 10 and 11 the fine should be unlimited as in clauses 12, 13, 14 and 15. The offences under clauses 10 and 11 may be very serious and we think the Courts should be given power to award heavy fines in very bad cases. — *Statement of Objects and Reasons*. Opium does not include *benis*; and *beetles* — 145 Ind. Cas. 825 = A I R 1933 Rang. 258

Provide — *vide* notes on section 4

Punishment for contravention of section 5

11 Whoever in contravention of section 5 or any rule made under that section or of any condition of a licence granted thereunder,

(a) cultivates the poppy or

(b) manufactures opium,

shall be punished with imprisonment which may extend to two years, or with fine, or with both

* In British India the words Provincial Government have been substituted by G I Order of 1937. In Burma for these words read the word Governor — *vide* G I Order of 1937

† In British India —

vide
1937

words British Burma —

stituted by G I Order of
— *vide* G I Order of 1937

12 Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine or with both

Punishment for contravention of section 6

Punishment for contravention of section 7

13 Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into [British India] *
- (b) exports from [British India],* or
- (c) tranships

any dangerous drug shall be punished with imprisonment which may extend to two years, or with fine, or with both

Punishment for contravention of section 8

14 Whoever, in contravention of section 8, or any rule made under that section or any condition of a licence issued thereunder,

(a) [imports or exports inter-provincially]†, transports, possesses or sells any manufactured drug or coca leaf, or

(b) manufactures medicinal opium or any preparations containing morphine, diacetylmorphine or cocaine, shall be punished with imprisonment which may extend to two years, or with fine, or with both

15 Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permits it to be used for the commission by any other person of an offence punishable under section 10, section 12, section 13, or section 14, shall be punished with imprisonment which may extend to two years, or with fine, or with both

Notes—“As clause 10 relates to the serious offences of the manufacture, import, export and sale of prepared opium, we consider it should be included within the category given in these clauses. The references in these clauses have been re-numbered.”—*Statement of Objects and Reasons*

16 Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, or section 14, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both

Enhanced punishment for certain offences after previous conviction

Notes—*vide* notes under section 15

* In British Burma for the words ‘British India’ read the words ‘British Burma’—*F. & G. B. Order of 1937*

† In Burma the words within brackets have been omitted by *G. B. Order of 1937*.

17. Whoever, having been convicted of an offence punishable under section 15, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

18. (1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13, or section 14, and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the form contained in Schedule I, and the provisions of the Code of Criminal Procedure, 1898,* shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court, or by the High Court when exercising its powers of revision.

Notes—'We have added two new sub clauses in order to make it quite clear that a bond shall be cancelled when a conviction is set aside, and that an appellate Court, or the High Court when exercising its revisional powers, shall be empowered to require a bond to be executed'—*Statement of Objects and Reasons*

19. Whoever engages in or controls any trade whereby a dangerous drug is obtained outside [British India] † and supplied to any person outside [British India] † otherwise than in accordance with the conditions of a licence granted under section 9, shall be punished with fine which may extend to one thousand rupees.

Notes—'Clause 19 is introduced to supply the penalty for the new clause 9 inserted by us. We propose to limit the penalty to a fine of one thousand rupees without imprisonment'—*Statement of Objects and Reasons*

20. Whoever attempts this Chapter, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with the punishment provided for the offence.

21. (1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed in consequence of such abetment and notwithstanding anything contained in section 116 of the Indian

* V of 1899

† In British Burma for the words 'British India' read the words 'British Burma' (vide G. B. Order of 1937)

Penal Code * be punished with the punishment provided for the offence

(2) A person abets an offence within the meaning of this section who, in [British India]†, abets the commission of any act in a place without and beyond [British India]‡ which—

(a) would constitute an offence if committed within [British India]†, or

(b) under the laws of such place is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter if committed within [British India] †

CHAPTER IV

PROCEDURE

22 (1) The Collector or other officer authorised by the [Provincial Government]‡ in this behalf, or [a Presidency Magistrate or] § a Magistrate of the first class or a Magistrate of the second class specially empowered by the [Provincial Government] † in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III, or for the search, whether by day or by night, of any building vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed

(2) The officer to whom a search warrant under sub section (1) is addressed shall have all the powers of an officer acting under section 23

Notes — We have amended this clause so as to give power to issue warrants to Presidency Magistrates in the Presidency towns and also in order to give this power to selected Magistrates of the second class. The clause now confers these powers on Courts which have similar powers under the Opium Act 1878 — *Statement of Objects and Reasons*

23 (1) Any officer of the department of Excise Police, Customs Salt, Opium or Revenue superior in rank to a peon or constable, authorised in this behalf by the [Provincial Government,] † who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset, —

(a) enter into any such building, vessel or place

* XLV of 1860

† In British Burma for the words British India read the words British Burma (vide G B Order of 1937)

‡ In British India the words Provincial Government have been substituted by G B Order of 1937. In Burma for these words read the word Governor (vide G B Order of 1937)

§ The words within brackets have been omitted in Burma by G B Order of 1937

(b) in case of resistance, break open any door and remove any other obstacle to such entry,

(c) seize such drug and all materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under section 33 and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug, and

(d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief

(2) Where an officer takes down any information in writing under sub section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior

Power of seizure and arrest in public places

24 Any officer of any of the departments mentioned in section 23 may—

(a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed, and, along with such drug any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug,

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company

Notes — "The amendment in this clause follows from the amendment to sub clause (c) of clause 23 — *Statement of Objects and Reasons*

25 The provisions of the Code of Criminal Procedure, 1898,* shall apply, in so far as they are not inconsistent with the provisions of sections 22, 23 and 24, to all warrants issued and arrests and searches made under those sections

Mode of making searches and arrests

26 All officers of the several departments mentioned in section 23 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act

Obligations on officers to assist each other

27. Whenever any person makes any arrest or seizure under this Act, he shall, within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests, and seizures

28 Any person empowered under section 23 or section 24 who—

Punishment for vexatious entry, search, seizure or arrest

(a) enters or searches, or seizes any vessel or place; or enters or searches, or seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 33, or of seizing any document or other article liable to seizure under section 23 or section 24, or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punished with fine which may extend to five hundred rupees

Notes—“The amendment in this clause follows from the amendment in sub clause (c) of clause 23”—*Statement of Objects and Reasons*

29 (1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued, and every person arrested and article seized under section 23 or section 24 shall be forwarded without delay to the officer in charge of the nearest police station or to the nearest officer of the Excise Department empowered under section 30

Disposal of persons arrested and of articles seized

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

30. The [Provincial Government]* may invest any officer of the Excise Department or any class of such officers, with the powers of an officer in charge of a police station for the investigation of offences under this Act

Power to invest Excise officers with powers of an officer in charge of a police station

Notes—“We have introduced a new section 30 after section 29.”

Reasons

* In British India the words “Provincial Government” have been substituted by G. I. Order of 1937. In Burma for these words read the word “Governor”, (vide G. I. Order of 1937)

(b) in case of resistance, break open any door and remove any other obstacle to such entry,

(c) seize such drug and all materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under section 33 and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug and

(d) detain and search, and if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief

(2) Where an officer takes down any information in writing under sub section (1) or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior

Notes — 'As the Bill is aimed at traffic carrying out the search of a house containing documents or other articles which may have been the subject matter of an offence

We have added a proviso which will empower

by night under circumstances where there is reason to believe that delay will result in the escape of the offenders or the removal of illicit drugs We have added a new sub-clause to ensure that these powers shall be properly exercised — *Statement of Objects and Reasons*

Power of seizure and arrest in public places

24 Any officer of any of the departments mentioned in section 23 may—

(a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed and along with such drug any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company

Notes — 'The amendment in this clause follows from the amendment to sub clause (c) of clause 23 — *Statement of Objects and Reasons*

25 The provisions of the Code of Criminal Procedure, 1898,* shall apply, in so far as they are not inconsistent with the provisions of sections 22, 23 and 24 to all warrants issued and arrests and searches made under those sections

26 All officers of the several departments mentioned in section 23 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act

Obligations on officers to assist each other

27 Whenever any person makes any arrest or seizure under this Act, he shall, within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests, and seizures

28 Any person empowered under section 23 or section 24 who—

Punishment for vexatious entry, search, seizure or arrest

or searches, place, or seizure of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 33, or of seizing any document or other article liable to seizure under section 23 or section 24, or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punished with fine which may extend to five hundred rupees

Notes—"The amendment in this clause follows from the amendment in sub clause (c) of clause 23.—*Statement of Objects and Reasons*

29 (1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued, and every person arrested and article seized under section 23 or section 24 shall be forwarded without delay to the officer in charge of the nearest police station or to the nearest officer of the Excise Department empowered under section 30

Disposal of persons arrested and of articles seized

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

30. The [Provincial Government]* may invest any officer of the Excise Department or any class of such officers, with the powers of an officer in charge of a police station for the investigation of offences under this Act

Power to invest Excise officers with powers of an officer in charge of a police station

Notes—"We have inserted a new clause 30 among the clauses."

Reasons

* In British India the words "Provincial Government" have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor", (vide G. I. Order of 1937)

31 No Magistrate shall try an offence under this Act unless he is [a Presidency Magistrate or]* a Magistrate of the first class, or a Magistrate of the second class specially empowered by the [appropriate Government]† in this behalf

[In this section "the appropriate Government" means as respects any contravention of any rules which under this Act fall to be made by the Provincial Government, that Government, and in other cases the Central Government]‡

Notes — We have re drafted this clause so as to give jurisdiction to second class Magistrate specially empowered and have thus brought it into line with the provisions of the Opium Act 1878 — *Statement of Objects and Reasons*

32. In trials under this Act it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter III in respect of—

Presumption from possession of illicit articles

(a) any dangerous drug ,

(b) any poppy or coca plant growing on any land which he has cultivated

(c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drug , or

(d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residue left of the materials from which a dangerous drug has been manufactured, for the possession of which he fails to account satisfactorily

Notes — We have made a restricting amendment in sub clause (b) , as it seems too wide — *Statement of Objects and Reasons*

33 (1) Whenever any offence has been committed which is punishable under Chapter III, the dangerous drug materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation

Liability of illicit articles to confiscation

(2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found and the other contents, if any, of such receptacles or packages and the animals, vehicles, vessels and other conveyances used in carrying the same, shall likewise be liable to confiscation

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed

* In Burma omit the words within brackets — *Vide G. B. Order of 1937*

† The words within brackets have been substituted in British India by G. I. Order of 1937 In Burma for these words read the word "Governor" , (*vide G. B. Order of 1937*)

‡ In British India the words within brackets have been inserted by G. I. Order of 1937 In Burma these words have been omitted — *Vide G. B. Order of 1937*,

34 (1) In the trial of offences under this Act whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Chapter is liable to confiscation under section 33 and, if it decides that the article is so liable, it may order confiscation accordingly

(2) Where any article seized under this Chapter appears to be liable to confiscation under section 33, but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer authorised by the [Provincial Government]* in this behalf, may inquire into and decide such liability, and may order confiscation accordingly

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim

Provided further that if any such article, other than a dangerous drug is liable to speedy and natural decay or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold and the provisions of this sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation

Notes — Under this clause as it stood persons who were not convicted had no right of appeal against an order confiscating their property. We have added a sub clause giving them this right — *State of Objects and Reasons*

35 [In connection with offences against rules which under this Act fall to be made by the Provincial Government, the Provincial Government, and in connection with other offences the Central Government]† may make rules to regulate—

(a) the disposal of all articles confiscated under this Act, and
(b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act

Notes — In sub clause (b) we have made a small amendment in order to secure that Government may give rewards out of fines and confiscations to persons who are neither officers nor informers, such as private persons who take an active part in an important capture — *State of Objects and Reasons*

CHAPTER V

MISCELLANEOUS

Provisions regarding rules

36 (1) All rules made under this Act shall be subject to the condition of previous publication ‡

[(2) Rules made under this Act shall be published in the official Gazette]*

37 (1) Any arrear of any licence fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if it were an arrear of land-revenue

Recovery of sums due to Government

(2) When any person in compliance with any rule made under this Act, gives a bond (other than a bond under section 18) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty, within the meaning of section 74 of the Indian Contract Act, 1872 † and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue

38 All prohibitions and restrictions imposed by or under this Act on the import into [British India] ‡ the export from [British India] ‡ and the transshipment of dangerous drugs, shall be deemed to be prohibitions and restrictions imposed under section 19 or section 134 of the Sea Customs Act, 1878 § and the provisions of that Act shall apply accordingly

Application of the Sea Customs Act 1878

Provided that where the doing of any thing is an offence punishable under that Act and under this Act nothing in that Act or in this section shall prevent the offender from being punished under this Act

39 (1) Nothing in this Act or in the rules made thereunder shall affect the validity of any enactment of a [local or provincial Legislature] || for the time being in force or of any rule made thereunder, which imposes any restriction not imposed by or under this Act, or imposes a restriction greater in degree than a corresponding restriction imposed by or under this Act on the consumption of or traffic in any dangerous drug within [British India] ‡

Saving of local and special laws

[(2) Nothing in this Act or in the rules made thereunder shall affect the validity of the Opium Act, 1857¶]

Provided that where the doing of any thing is an offence punishable under that Act and under this Act nothing in that Act or in this sub section shall prevent the offender from being punished under this Act]**

* In F
G I Or
(2) and (

(2) by
sections

† IX
‡ In Burma for the words British India read British Burma (vide G B Order of 1937)

§ VIII of 1878

|| In British India the words within brackets

r of

1937
..

Acts of the Governor General in Council —(contd from the foot note of the last page)

Year	No	Short title	Amendments
1878	1	The Opium Act, 1878 — <i>contd</i>	<p>(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport, and</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of opium, but does not include any preparation containing not more than 0.2 per cent of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930', and</p> <p>(b) for the definitions of "import" and "export" the following definitions shall be substituted, namely —</p> <p>as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930, and'</p> <p>In section 4,—</p> <p>(a) clauses (a) and (b) shall be omitted, and</p> <p>(b) clauses (c), (d), (e) and (f) shall be re-lettered as clauses (a), (b), (c) and (d), respectively.</p> <p>In section 5,—</p> <p>(a) clauses (a) and (b) shall be omitted,</p> <p>(b) clauses (c), (d), (e) and (f) shall be re-lettered as clauses (a), (b), (c) and (d), respectively, and</p> <p>(c) in the proviso, for the word and figure 'section 6' the words and figures 'the Dangerous Drugs Act, 1930' shall be substituted</p> <p>Section 6 shall be omitted</p> <p>In section 9 —</p> <p>(a) and</p> <p>(b) c be and</p> <p>In section 11,—</p> <p>(a) clause (a) shall be omitted</p> <p>(b) In clause (c), for the word, brackets and letters "(d) or (e)" the word, brackets and letters "(b) or (c)" shall be substituted,</p> <p>(c) in clause (d), for the letter and brackets '(f)' the letter and brackets '(d)' shall be substituted, and</p> <p>(d) clause (b), and clauses (c) and (d) as so amended, shall be re-lettered as clauses (a), (b) and (c), respectively</p> <p>In section 14 —</p> <p>(a) the word "manufactured," shall be omitted, and</p> <p>(b) in clause (c), the words "and all materials used in the manufacture thereof" shall be omitted</p> <p>Section 22 shall be omitted</p>

Acts of the Governor General in Council—concluded

Year	No	Short title	Amendments
1898	VI	The Indian Post Office Act, 1898	In section 25, after the words "any specified description" the words "or where the import or export into or from British India of goods of any specified description has been prohibited or restricted by or under any other enactment for the time being in force" shall be inserted

Regulation by the Governor General in Council.

1915	1	The Excise Regulation, 1915	<p>In section 2,—</p> <p>(a) for the definition of 'export' in clause (8), the following definition shall be substituted, namely —</p> <p>'(8) 'export' means to take out of the province</p> <p>Provided that, in the case of intoxicating and port (i) Act,</p> <p>(b) the definition of "hemp plant" in clause (9) shall be omitted,</p> <p>(c) for the definition of "import" in clause (10), the following definition shall be substituted, namely —</p> <p>"(10) 'import' means to bring into the province</p> <p>Provided that, in the case of intoxicating drugs specified in sub clauses (i), (ii) and (iii) of clause (11), it means to</p> <p>(d)</p> <p>(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom, and</p> <p>(iv)</p> <p>being opium, coca leaf, or a manufactured drug, as defined in section 2 the Dangerous Drugs Act, 1930,</p>
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Regulation by the Governor General in Council.—concl'd.

Year	No	Short title	Amendments.
1915	I	The Excise Regulation, 1915 —concl'd	<p>(c) for the definition of "transport" in clause (19), the following definition shall be substituted, namely —</p> <p>"(19) 'transport' means to move from one place to another within the province provided that import and export from British Baluchistan from and to the territories administered by the Agent to the Governor General in Baluchistan as such Agent shall be deemed to be transport,"</p> <p>Section 3 shall be omitted</p> <p>In sections 13, 33 and 50, the words "or coca," wherever they occur, shall be omitted</p> <p>In clause (d) of subsection (1) of section 30, after the words "of any offence", where they occur for the first time, the words 'under the Dangerous Drugs Act, 1930, or ' shall be inserted</p> <p>In section 33, the proviso shall be omitted</p>

Burma Acts.

1909	VII	The Burma Opium Law Amendment Act, 1909	<p>For section 2 the following section shall be substituted, namely —</p> <p>' 2 In this Act, 'opium' includes opium as defined in section 3 of the Opium Act, 1878 and opium derivatives as defined in clause (f) of section 2 of the Dangerous Drugs Act, 1930."</p> <p>In clause (a) of section 3 after the words and figures 'Opium Act, 1878,' the words and figures "or the Dangerous Drugs Act, 1930," shall be inserted</p> <p>In subsection (1) of section 4,—</p> <p>(a) for the words 'the Opium Law for the</p>
1917	V	The Burma Excise Act, 1917	<p>(b)</p> <p>22 of the Dangerous Drugs Act, 1930, shall be inserted,</p> <p>(c) in clauses (b) and (c), for the words "the Opium Law the words "any law for the time being in force relating to opium" shall be substituted</p> <p>In section 2—</p> <p>(a) clause (d) shall be omitted,</p> <p>(b) to the definition of "Export" in clause (i) the following proviso shall be added, namely —</p> <p>"Provided that in the case of intoxicating drugs specified in sub clauses (i) (ii) and (iii) of clause (1), it means to export inter provincially, as defined in clause (f) of section 2 of the Dangerous Drugs Act, 1930"</p> <p>(c) clause (j) shall be omitted :</p>

Burma Act.—concl'd.

Year	No.	Short title.	Amendments.
1917	V	The Burma Excise Act 1917— <i>concl'd.</i>	<p>(d) to the definition of "Import" in clause (k) the following proviso shall be added, namely —</p> <p>"Provided that in the case of intoxicating drugs specified in sub clauses (i) (ii) and (iii) of clause (l), it means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930", and</p> <p>(e) for the definition of "intoxicating drug" in clause (l) the following definition shall be substituted namely .—</p> <p>"Intoxicating drug" means—</p> <p>(i) the leaves, small stalks and flowering or</p> <p>(ii)</p> <p>than those necessary for packing and transport,</p> <p>(iii) any mixture, with or without neutral material, of any of the above forms of intoxicating drug, or any drink prepared therefrom, and</p> <p>(ii) any other intoxicating or narcotic substance which the Local Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act, 1930 "</p> <p>In section II, for the words "the coca plant or any plant specified as an intoxicating drug by notification under section 2 (i) (ii)" the word "coca plant" shall be substituted</p> <p>ted</p> <p>Section 32 shall be omitted.</p> <p>In sections 44, 45, 46, 54, 55, 56 and 57, the word and figures "section 32" shall be omitted</p> <p>Section 64 shall be omitted</p>

THE DESTRUCTIVE INSECTS AND PESTS ACT, 1914

CONTENTS.

PRFAMBLE

Sections

- 1 Short title
- 2 Definitions
- 3 Power of Central Government to regulate or prohibit the import of articles likely to infect
- 4 Operation of notification under section 3
- 4A Power of Central Government to regulate or prohibit transport from province to province of insects or articles likely to infect

Sections

- 4B Refusal to carry article of which
- 5 make rules
- 5 Power of Provincial Government to make rules
- 5A Penalties
- 6 Protection to persons acting under Act

THE DESTRUCTIVE INSECTS AND PESTS ACT, 1914.

ACT NO II OF 1914

[Received the assent of the Governor-General on the 3rd February, 1914]

An Act to prevent the introduction into [and to transport from one province to another in]* British India of any insect, fungus or other pest, which is or may be destructive to crops

WHEREAS it is expedient to make provision for preventing the introduction into British India of any insect, fungus or other pest, which is or may be destructive to crops. It is hereby enacted as follows —

Short title

1 This Act may be called the Destructive Insects and Pests Act, 1914

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'crops' includes all agricultural or horticultural crops [and all trees, bushes and plants], †

(b) "import means the bringing or taking by sea, "land or air † [across any customs frontier as defined by the Central Government], § and

(c) "infection' means infection by any insect, fungus or other pest injurious to a crop

* In British India the words within brackets have been added by Act VI of 1933
VI of 1933

§ In British India the words within brackets have been inserted by G I Order of 1937
Omit these words in Burma

3 (1) The [Central Government]* may, by notification in the [official Gazette,]† prohibit or regulate, subject to such restrictions and conditions as he may impose, the import into [British India,]‡ or any part thereof, or any specified place therein, of any article or class of articles likely to cause infection to any crop [or of insects generally or of any class of insects]§

Power of [Central Government]* to regulate or prohibit the import of articles likely to infect.

(2) A notification under this section may specify any article or class of articles, [or any insects or class of insects,]§ either generally or in any particular manner, whether with reference to the country of origin, or the route by which imported or otherwise

4. A notification under section 3 shall operate as if it had been issued under section 19 of the Sea Customs Act, 1878, and the officers of Customs at every port shall have the same powers in respect of any article with regard to the importation of which such a notification has been issued as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by the law relating to Sea Customs and the law for the time being in force relating to Sea Customs or any such article shall apply accordingly

Operation of notification under section 3

4A The Central Government may, by notification in the official Gazette, prohibit or regulate, subject to such conditions as the Central Government may impose, the export from a province or the transport from one province to another province in British India of any article or class of articles likely to cause infection to any crop or of insects generally or any class of insects

Power of Central Government to regulate or prohibit transport from province to province of insects or articles likely to infect

4B When a notification has been issued under section 4A, then notwithstanding any other law for the time being in force the person responsible for the booking of goods or parcels at any railway station or inland steam vessel station,—

Refusal to carry articles of which transport is prohibited

(a) where the notification prohibits export or transport, shall refuse to receive for carriage at, or to forward or knowingly allow to be carried on, the railway or inland steam vessel from that station anything, of which import or transport is prohibited, consigned to any

as inserted in British India by G O Order

been inserted by Act VI of 1939

tish India by Act VI of 1939 But

these sections are not in force in Burma

place in British India outside the province in which such station is situate ; and

(b) where the notification imposes conditions upon export or transport, shall so refuse, unless the consignor produces, or the thing consigned is accompanied by, a document or documents of the prescribed nature showing that those conditions are satisfied

*[4C. Where, by or under any law in force in the territories of any Indian State, the import into that State of any article likely to cause infection to any crop or of any insect has been prohibited, the Central Government may, by notification in the official Gazette, declare that the provisions of section 4B shall apply in respect of any such article or insect consigned from any place in British India to any place in that State

Application of section 4B to articles exported to Indian States,
Provided that such Indian State prohibits the export to British India of any article or insect or class of insects, the import of which into British India has been prohibited by the Central Government

*[4D The Central Government may, by notification in the official Gazette, make rules prescribing the nature of the documents which shall accompany any article or insect the export or transport whereof is subject to conditions imposed under section 4A, or which shall be held by the consignor or consignee thereof, the authorities which may issue such documents and the manner in which the documents shall be employed

Power of Central Government to make rules
Provided that the said notification shall be placed, as soon as may be, on the table of both chambers of the Central Legislature]

5 (1) The [Provincial Government]† may,‡ make rules for the detention inspection, disinfection or destruction [of any insect or class of insects or]§ of any article or class of articles in respect of which a notification has been issued under section 3 [or under section 4A]§ or of any article which may have been in contact or proximity thereto, and for regulating the powers and duties of the officers whom it may appoint in this behalf

Power of [Provincial Government]† to make rules
(2) In making any rule under this section the [Provincial Government]† may direct that a breach thereof shall be punishable with fine, which may extend to one thousand rupees

Penalties
||[5A Any person who knowingly export any article or insect from a province or transport any article or insect from one province to another in British India, in contravention of a notification issued under section

* Sections 4A to 4D have been inserted in British India by Act VI of 1938 These sections are not in force in Burma

of 1937 substituted by G O Order of (vide G O Order of 1937)
Governor General in Council
1937 But in Burma read Governor , (vide G O Order

§ In British India the words within brackets have been inserted by Act VI of 1938 In Burma omit these words.

|| Section 5A has been inserted in British India by Act VI of 1938 In Burma omit this section

4A or attempts so to export or transport any article or insect, or exports or attempts to export from British India to an Indian State any article or insect in respect of which a notification under section 4C has been issued, and any person responsible for the booking of goods or parcels at a railway or inland steam vessel station who knowingly contravenes the provisions of section 4B shall be punishable with fine which may extend to two hundred and fifty rupees and upon any subsequent conviction, with fine which may extend to two thousand rupees]

Protect on to person acting under Act

6 No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act

THE INDIAN DOCK LABOURERS ACT (XIX OF 1934)

CONTENTS

PREFACE	Sections	Sections
1 Short title, extent, commencement and application	2 Definitions	3 Inspectors
4 Powers of Inspectors	5 Power to Central Government to make regulations	6 Power to Provincial Government to make rules
		7 General provisions relating to regulations and rules
		8 Abstracts of Act and regulations to be conspicuously posted
		9 Penalties
		10 Provisions relating to jurisdiction
		11 Power to exempt
		12 Protection to persons acting under this Act

THE INDIAN DOCK LABOURERS ACT, 1934

ACT NO XIX OF 1934

(Enacted by the Legislature of the Government of India on the 9th August 1934)

An act to give effect in [British India]* to the Convention concerning the protection against accidents of workers employed in loading and unloading ship

WHEREAS a Revised Draft Convention concerning the protection against accidents of workers employed in loading or unloading ships was adopted at Geneva on the twenty seventh day of April nineteen hundred and thirty two

AND WHEREAS it is expedient to give effect to [British India]* to the said Convention

It is hereby enacted as follows —

* In British Burma for the words British India read the words British Burma —
vide G. O. Order of 1937

Short title extent commencement
and application

1. (1) This Act may be called the
Indian Dock Labourers Act, 1934

* [(2) It extends to the whole of British India]

(3) It shall come into force on such date as the [Central Government]† may, by notification in the [official Gazette],‡ appoint

(4) It shall not apply to any ship of war of any nationality

Definitions

2 In this Act, unless there is any
thing repugnant in the subject or context—

(a) 'the processes' include all work which is required for or is
incidental to the loading or unloading of cargo or fuel into or from a
ship and is done on board the ship or alongside it, and

(b) 'worker' means any person employed in the processes

3. (1) The [Central Government]† may, by notification in the
[official Gazette],‡ appoint such persons as
it thinks fit to be Inspectors for the pur-

Inspectors

poses of this Act within such local limits as it may assign to them
respectively

(2) All principal officers of the Mercantile Marine Department
shall be Inspectors under this Act *ex officio* within the limits of their
charges

(3) Every Inspector shall be deemed to be a public servant within
the meaning of the Indian Penal Code and shall be officially sub-
ordinate to such authority as the [Central Government]† may direct

Powers of Inspectors

4 Subject to any rules made in this
behalf under section 6, an Inspector may,
within the local limits for which he is appointed—

(a) enter with such assistants (if any) as he thinks fit, any
premises or ship where the processes are carried on

(b) make such examination of the premises or ship and the
machinery and gear fixed or loose used for the processes, and of any
prescribed registers and notices and take on the spot or otherwise
such evidence of any person as he may deem necessary for carrying out
the purposes of this Act, and

(c) exercise any other powers which may be conferred upon him
by the regulations made under section 5

Power to [Central Govern-
ment]† to make regulations

5 (1) The [Central Government]†
may make regulations—

(a) providing for the safety of working places on shore and of
any regular approaches over a dock, wharf, quay or similar premises
which workers have to use for going to or from a working place at
which the processes are carried on, and for the lighting and fencing
of such places and approaches

* In British Burma omit sub section (2) — vide G B Order of 1937

† In British India the words Central Government have been substituted by G I Order of 1937 In Burma for these words read the word Governor (vide G B Order of 1937)

‡ In British India the words official Gazette have been substituted by G I Order of 1937 In British Burma for these words read the word Gazette (vide G B Order of 1937)

(b) prescribing the nature of the means of access which shall be provided for the use of workers proceeding to or from a ship which is lying alongside a quay, hulk or other vessel

(c) prescribing the measures to be taken to ensure the safe transport of workers proceeding to or from a ship by water and the conditions to be complied with by the vessels used for the purpose ,

(d) prescribing the nature of the means of access to be provided for the use of the workers from the deck of a ship to a hold in which the processes are carried on ,

(e) prescribing the measures to be taken to protect hatchways accessible to the workers and other openings in a dock which might be dangerous to them ,

(f) providing for the efficient lighting of the means of access to ships on which the processes are carried on and of all places on board at which the workers are employed or to which they may be required to proceed ,

(g) providing for the safety of the workers engaged in removing or replacing hatch coverings and beams used for hatch coverings ,

(h) prescribing the measures to be taken to ensure that no hoisting machine or gear whether fixed or loose used in connection therewith is employed in the processes on shore or on board ship unless it is in a safe working condition

(i) providing for the fencing of machinery, live electric conductors and steam pipes ,

(j) regulating the provision of safety appliances on derricks, cranes and winches ,

(k) prescribing the precautions to be observed in regard to exhaust and live steam ,

(l) requiring the employment of competent and reliable persons to operate lifting or transporting machinery used in the processes, or to give signals to a driver of such machinery, or to attend to cargo falls on winch ends or winch drums, and providing for the employment of a signaller where this is necessary for the safety of the workers ,

(m) prescribing the measures to be taken in order to prevent dangerous methods of working in the stacking, unstacking stowing and unstowing of cargo, or handling in connection therewith

(n) prescribing the precautions to be taken to facilitate the escape of the workers when employed in a hold or between decks in dealing with coal or other bulk cargo

(o) prescribing the precautions to be observed in the use of stages and trucks ,

(p) prescribing the precautions to be observed when the workers have to work where dangerous or noxious goods are or have been stowed or have to deal with or work in proximity to such goods ,

(q) providing for the rendering of first aid to injured workers and removal to the nearest place of treatment ,

(r) prescribing the provision to be made for the rescue of immersed workers from drowning

(s) prescribing the abstracts of this Act and of the regulations required by section 8 ,

(t) providing for the submission of notices of accidents and dangerous occurrences and prescribing the forms of such notices, the persons and authorities to whom they are to be furnished ,

culars to be contained in them and the time within which they are to be submitted,

(ii) specifying the persons and authorities who shall be responsible for compliance with regulations made under this Act,

(v) defining the circumstances in which and condition subject to which exemptions from any of the regulations made under this section may be given, specifying the authorities who may grant such exemptions and regulating their procedure,

(vi) defining the additional powers which Inspectors may exercise under clause (c) of section 4, and

(v) providing generally for the safety of workers

(2) Regulations made under this section may make special provisions to meet the special requirements of any particular port or ports

(3) In making a regulation under this section, the [Central Government]* may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues

Power to [Central Government]† to make rules 6 The [Central Government]† may make rules regulating—

(a) the inspection of premises or ships where the processes are carried on and

(b) the manner in which Inspectors are to exercise the powers conferred on them by this Act

7 (1) The power to make regulations and rules conferred by sections 5 and 6 is subject to the condition of the regulations and rules being made after previous publication

General provisions relating to regulations and rules (2) Regulations and rules shall be published in the [official Gazette.]‡

8 There shall be affixed in some conspicuous place near the main entrance of every dock, wharf quay or similar premises where the processes are carried on in English and in the language of the majority of the workers the abstracts of this Act and of the regulations made thereunder which may be prescribed by the regulations

Abstracts of Act and regulations to be conspicuously posted

Penalties

9 Any person who —

(a) wilfully obstructs an Inspector in the exercise of any power under section 4, or fails to produce on demand by an Inspector any registers or other documents kept in pursuance of the regulations made under this Act, or any gear, fixed or loose, used for the processes or

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' (vide G B Order of 1937)

† Before the words 'Central Government' the words 'Subject to the control of the Governor General in Council' have been omitted by G I Order of 1937 and G B Order of 1937 respectively

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Gazette', (vide G B Order of 1937)

conceals or prevents or attempts to prevent any person from appearing before, or being examined by, an Inspector, or

(b) unless duly authorised, or in case of necessity, removes any fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing required to be provided by or under the regulations made under this Act, or

(c) having in case of necessity removed any such fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing, omits to restore it at the end of the period for which its removal was necessary,

shall be punishable with fine which may extend to five hundred rupees

10 (1) No Court inferior to that of [a Presidency Magistrate or]*
Provisions relating to jurisdiction a Magistrate of the first class shall try any offence under this Act or the regulations made thereunder

(2) No prosecution for any offence under this Act or the regulations made thereunder shall be instituted except by or with the previous sanction of an Inspector

(3) No Court shall take cognizance of any offence under this Act or the regulations made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed

11 The [Central Government]† may by notification in the
Power to exempt [official Gazette],‡ exempt from all or any of the provisions of this Act and of the regulations made thereunder, no such conditions if any as he thinks fit,—

(a) any port or place, dock, wharf quay or similar premises at which the processes are only occasionally carried on or the traffic is small and confined to small ships, or

(b) any specified ship or class of ship

12 No suit, prosecution or other legal proceeding shall lie against
Protection to persons acting under this Act any person for anything which is in good faith done or intended to be done under this Act

* In British Burma omit the words within brackets—*vide* C. B. Order of 1937

† In British India the words Central Government have been substituted by G. I. Order of 1937. But in British Burma for these words read the word Governor (*vide* G. B. Order of 1937)

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In British Burma for these words read the word Gazette (*vide* G. B. Order of 1937)

THE DOURINE ACT (V OF 1910.)

CONTENTS.

PREAMBLE

Sections

- 1 Short title and extent
- 2 Definitions
- 3 Registration of horses
- 4 Appointment of inspectors and veterinary practitioners
- 5 Powers of inspector
- 6 Duties of inspector
- 7 Inspection of horses
- 8 Powers of veterinary practitioner

Sections

- 9 Compensation for horse destroyed etc
- 10 Settlement of compensation
- 11 Committees for hearing appeals
- 12 Appeals
- 13 Vexatious entries and searches
- 14 Rules
- 15 Penalties
- 16 Protection to persons acting under Act

Stamps

THE DOURINE ACT, 1910

ACT NO V OF 1910

(Received the assent of the Governor General on the 25th February, 1910)

An act to provide for the prevention of the spread of Dourine

WHEREAS it is expedient to provide for the prevention of the spread of dourine It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Dourine Act 1910

(2) This section extends to the whole of [British India]* the rest of this Act extends only to such areas, as the [Provincial Government]† may by notification in the [official Gazette]‡ direct

2 (1) In this Act the expressions "Inspector" and "veterinary practitioner" mean, respectively, the officers appointed as such under this Act, acting within the local limits for which they are so appointed

(2) The provisions of this Act in so far as they relate to entire horses shall if the [Provincial Government]† by notification as aforesaid, so directs apply also to entire asses used for mule-breeding purposes

3 The [Provincial Government]† may, by notification as aforesaid, make such orders as it thinks fit directing and regulating the registration of entire horses maintained for breeding purposes

4 (1) The [Provincial Government]† may, by notification as aforesaid, appoint any persons it thinks fit to be inspectors, and any qualified veterinary surgeons to be veterinary practitioners, under this Act, and to exercise and perform within any area prescribed by the notification, the powers conferred and duties imposed by this Act upon such officers respectively

* In British Burma for the words British India read the words 'British Burma', (vide G B Order of 1937)

† The words Provincial Government have been substituted in British India by G I Order of 1937 In British Burma for these words read the word 'Governor', (vide G B Order of 1937)

‡ In British India the words official Gazette have been substituted by G I Order of 1937 In British Burma for these words read the word Gazette, (vide G B Order of 1937)

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code

5 An inspector may, subject to such
Powers of Inspector rules as the [Provincial Government]*
may make in this behalf.—

(a) enter and search any building field or other place for the purpose of ascertaining whether there is therein any horse which is affected with dourine. †

(b) prohibit by order in writing, the owner or keeper of any horse, which in his opinion is affected with dourine, from using such horse for breeding purposes, pending examination by the veterinary practitioner

[(c) direct by order in writing the owner or keeper of any horse which, in the opinion of the Inspector, is affected with dourine to remove it or permit it to be removed for the purpose of segregation to a place specified in the order and such direction shall be sufficient authority for the detention of the horse in that place for that purpose]†

6 An inspector issuing an order under section 5, § shall forth-
with forward a copy of such order to the
Duties of inspector veterinary practitioner

7 A veterinary practitioner receiving a copy of an order forwarded under section 6 shall, as soon as possible after receipt of such copy examine the horse mentioned therein and may for such purpose enter any building, field or other place

8 A veterinary practitioner may—

(a) cancel any order issued under section 5 § , or

(b) if on microscopical examination [or by other scientific test] he finds that any horse is affected with dourine.—

(1) in the case of an entire horse, cause it to be castrated.

[(11) in the case of a mare with the previous sanction of such authority as the [Provincial Government]* may appoint in this behalf, or, if so empowered by the [Provincial Government,]* without such sanction cause it to be destroyed]"

9 When any horse is castrated or destroyed under section 8 the market value of such horse immediately before it became affected with dourine shall be ascertained and the [Provincial Government]* shall pay as compensation to the owner thereof—

* The words Provincial Government have been substituted by G. I. Order of 1937 in British India. But in British Burma for these words read the word Governor (vide G. O. C. 2 of 1937).

(a) in the case of a mare which has been destroyed or of an entire horse which has died in consequence of castration, such market-value, and

(b) in the case of an entire horse which survives castration half the amount by which such value has been diminished owing to infection with dourine and castration

10 (1) A veterinary practitioner may award, as compensation to be Settlement of compensation paid under section 9 in respect of each horse castrated or destroyed under section 8, a sum not exceeding two hundred and fifty rupees

(2) If, in the opinion of the veterinary practitioner the amount which should be paid as such compensation exceeds two hundred and fifty rupees, he shall report accordingly to the Collector, who shall decide the amount to be so paid

11 (1) The [Provincial Government]* shall, by rules published in Committees for hearing appeals the [official Gazette,]† make provision for the constitution of a committee or committees for the hearing of appeals from decisions under section 10

(2) Such rules shall provide that not less than one member of any committee constituted thereunder shall be a person not in the [service of the Crown]‡ or of a local authority

12 Any owner may within two months from the date of a decision Appeals under section 10 appeal against such decision to the committee constituted in that behalf by rules made under section 11, and the decision of such committee shall be final

13 (1) Whoever being an inspector appointed under this Act Vexatious entries and searches vexatiously and unnecessarily enters or searches any field building or other place shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed

14 (1) The [Provincial Government] * may make rules for the Rules purpose of carrying into effect the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power such rules as aforesaid may—
[(a) regulate the exercise of the powers conferred on Inspectors under section 5]§

Government have been substituted by G
the words read the words Governor

have been substituted by G I Order
and the word Gazette — vide G B

substituted by C I Order of
Government — vide G B

(b) regulate the action to be taken by veterinary practitioners under section 8 ; *

(3) All such rules shall be published in the [official Gazette,]† and, on such publication, shall have effect as if enacted in this Act

(4) In making any rule under this section the [Provincial Government]‡ may direct that a breach of it shall be punishable with fine which may extend to fifty rupees

Penalties

15 Whoever uses or permits to be used for breeding purposes --

(a) any horse which has not been registered in accordance with the requirements of a notification under section 3, or

[(b) any horse in respect of which an order under clause (b) or clause (c) of section 5 is in force,]§ shall be punishable with fine which may amount, in the case of a first conviction, to fifty rupees or, in the case of a second or subsequent conviction, to one hundred rupees

16 No suit prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

THE DRAMATIC PERFORMANCE ACT (XIX OF 1876)

CONTENTS

PREAMBLE	Sections
Sections	enter and arrest and seize
1 Short title Local Extent	9 Saving of prosecutions under Penal Code sections 124A and 294
2 Magistrate defined	10 Power to prohibit dramatic performance in any local area, except under license
3 Power to prohibit certain dramatic performances	11 Powers exercisable by Central Government
4 Power to serve order of prohibition	12 Exclusion of performances at religious festivals
5 Penalty for disobeying order	
6 Power to notify order	
7 Penalty for disobeying prohibition	
8 Power to call for information	
9 Power to grant warrant to Police to	

* The word and after this and clause (c) have been omitted by Act 8 of 1920

† In British India the words official Gazette have been substituted by G I Order of 1937 But in British Burma for these words read the word Gazette (vide G B Order of 1937)

‡ In British India the words Provincial Government have been substituted by G I Order of 1937 But in British Burma for these words read the word Governor. Vide G B Order of 1937

§ Clause (b) has been substituted by Act 8 of 1920

THE DRAMATIC PERFORMANCE ACT, 1876.

ACT NO XIX OF 1876

(Received the assent of the Governor General on the 16th December, 1876)

An Act for the better control of public dramatic performances

WHEREAS it is expedient to empower the Government to prohibit

Preamble. public dramatic performances which are
cane, It is hereby enacted as follows —
scandalous, defamatory, seditious or obscene,

Short title 1 This Act may be called the
Dramatic Performances Act, 1876

Local extent. [It extends to the whole of British
India*,]†

[2. In this Act "Magistrate" means, in the Presidency-towns,
"Magistrate defined a Magistrate of Police, and elsewhere the
Magistrate of the district]‡

Power to prohibit certain dramatic performances 3 Whenever the [Provincial Government]§ is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature,

(b) likely to excite the Government
established by law, or

(c) likely to deprave and corrupt persons present at the performance,
the [Provincial Government]¶ may empower in this behalf
Rangoon the [Provincial Government] it

Explanation—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is to be given.

Power to serve order of prohibition.

* Certain words after this repealed by Act 10 of 1914 have been omitted
† The words within brackets have been omitted in British Burma—*Vide* G. B. Order of 1937

‡ In Burma for section 2 substitute the following —'2 In this Act "Magistrate" means 'the District Magistrate

§ In British India the words 'Provincial Government' have been substituted by G. I. Order of 1937. But in British Burma for these words read the word 'Governor', (*vide* G. B. Order of 1937)

¶ In British India after the words "British India" insert the words "or British Burma"

formance is intended to take place ; and any person on whom such
 copy is served, and who does, or willingly
 Penalty for disobeying order. permits, any act in disobedience to such
 order, shall be punished on conviction before a Magistrate with
 imprisonment for a term which may extend to three months, or with
 fine, or with both.

5. Any such order may be notified by proclamation, and a
 written or printed notice thereof may be
 Power to notify order. struck up at any place or places adapted
 for giving information of the order to the persons intending to take
 part in or to witness the performance so prohibited.

6 Whoever after the notification
 of any such order—
 Penalty for disobeying prohi-
 bition.

(a) takes part in the performance prohibited thereby or in any per-
 formance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator
 during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of any house,
 room or place, opens, keeps or uses the same for any such perfor-
 mance, or permits the same to be opened, kept or used for any such
 performance,

shall be punishable on conviction before a Magistrate with impris-
 onment for a term which may extend to three months, or with fine,
 or with both

7. For the purpose of ascertaining the character of any intended
 public dramatic performance, the [Provin-
 Power to call for information cial Government],* or such officer as it
 may specially empower in this behalf, may apply to the author, pro-
 prietor or printer of the drama about to be performed, or to the
 owner or occupier of the place in which it is intended to be per-
 formed, for such information as the [Provincial Government]* or
 such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to
 the best of his ability, and whoever contravenes this section shall be
 deemed to have committed an offence under section 176 of the Indian
 Penal Code.†

8. If any Magistrate has reason to believe that any house, room
 or place is used, or is about to be used, for
 any performance prohibited under this Act,
 Power to grant warrant to Police to enter and arrest and seize. he may, by his warrant, authorize any
 officer of Police to enter with such assis-
 tance as may be requisite, by night or by day, and by force, if necessary,
 any such house, room or place, and to take into custody all persons
 whom he finds therein, and to seize all scenery, dresses and other
 articles found therein and reasonably suspected to have been used, or
 to be intended to be used, for the purpose of such performance.

* have been substituted by C
 and the word ' Governor'.

Saving of prosecutions under Penal Code sections 121A and 294

9 No conviction under this Act shall bar a prosecution under section 124A or section 294 of the Indian Penal Code *

10 Whenever it appears to the [Provincial Government]† that the provisions of this section are required in any local area, it may† declare by notification in the [official Gazette]§, that such provisions are applied to such area from a day to be fixed in the notification

Power to prohibit dramatic performance in any local area except under license

On and after that day, the [Provincial Government]† may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such [Provincial Government,]† or such officer as it may specially empower in this behalf

The [Provincial Government]† may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance to the [Provincial Government]† or to such officer as it may appoint in this behalf

A copy of any order under this section may be served on any keeper of a place of public entertainment and if thereafter he does or willingly permits any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both

[11 (Powers exercisable by Governor General)—*Repealed by G I Order of 1937 and G B Order of 1937 respectively*]

Exclusion of performances at religious festivals

12 Nothing in this Act applies to any *jalras* or performances of a like kind at religious festivals

THE INDIAN ELECTRICITY ACT, 1910

ACT NO IX OF 1910

* * * *

Criminal Offences and Procedure

(Extracts from the Act)

39 Whoever dishonestly abstracts consumes, or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code * and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction

Theft of energy

* XLV of 1960
† In British India the words, Provincial Government have been substituted by G I Order of 1937 But in British Burma for these words read the word Governor (vide G B Order of 1937)

* Certain words after this repealed by Act 4 of 1914 have been omitted
§ In British India the words official Gazette have been substituted by G I Order of 1937 In British Burma for these words read the word Gazette (vide G B Order of 1937)

Dishonesty meaning of—As regards the meaning of dishonesty, *s. 24* of the Indian Penal Code. As regards the definition of theft *s. 378* of the Indian Penal Code. This section is based on *s. 23* of the English Electric Lighting Act, 1882 (45 & 46 Vict. c. 56).

Notes—Section 39 of the Electricity Act creates an offence and prosecution for the theft of electric energy can be instituted only by one of the persons mentioned in *s. 50* of the Act. 85 P. L. R. 758. No offence is committed where consumer uses electric machinery in a bona fide manner. A. I. R. 1931 All. 370—35 Cr. L. J. 1274.

40 Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.

Maliciously—It means a wrongful act done intentionally without just cause or excuse. *Ernst v. Prosser* 4 B. & C. 417 255.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for unauthorised supply of energy by non licensees

42 Whoever—

(a) being a licensee save as permitted under section 27 or section 51 or by his licensee or sub-licensee or by his agent or places any or provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him discontinues the supply of energy or fails to supply energy, or

(c) makes default in complying with any order issued to him under section 34, sub-section (2), shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing offence or default with a daily fine which may extend to one hundred rupees.

Notes—The penal sections must be strictly construed.

43 Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy

44 Whoever—

(a) connects any meter referred to in section 26 sub-section or any meter, indicator or apparatus referred to in section 26,

tion (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention, or

(b) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee without such licensee's consent, or

(c) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering, or

(d) improperly uses the energy of a licensee ;
shall be punishable with fine which may extend to "five"* hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to 'fifty'* rupees, and 'if it is proved that any artificial means exists'* for making such connection as is referred to in clause (c) or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c) or for facilitating such improper use as is referred to in clause (d), "and that"* the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, "it shall be presumed, until the contrary is proved,"* that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer

Notes — 'Maliciously' means and implies an intention to do an act which is wrong
ful to the detriment of another 23 Q B D 598

45 Whoever maliciously extinguishes any public lamp shall be
Penalty for extinguishing public lamps punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both

Notes — Malice in its legal sense denotes a wrongful act done intentionally with
out just cause or excuse *Macpherson v Daniels* (1831) 10 B & C 272 see also 23
Q B D 598

46 Whoever negligently causes energy to be wasted or diverted,
Penalty for negligently wast- or negligently breaks, throws down or
ing energy or injuring works damages any electric supply-line, post, pole
or lamp or other apparatus connected with
the supply of energy, shall be punishable with fine which may extend
to two hundred rupees

Notes — The onus of proving negligence lies on the party alleging it 27 L J Ex
25 L R 8 Q B D 42

47. Whoever, in any case not already provided for by sections
Penalty for offences not other 39 to 46 (both inclusive) makes default in
wise provided for complying with any of the provisions of
this Act, or with any order issued under
it, or, in the case of a licensee, with any of the conditions of his
license, shall be punishable with fine which may extend to one

* Substituted by Act I of 1922

hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32 as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency, and that the offender complied with the said provisions as far as was reasonable in the circumstances

Notes—This section deals in terms with default in complying with any of the provisions of the Act or with a default in complying with any of the conditions of his license under the Act 69B 740-37. See for cases under this section A I R 1933 Rang 70

48 The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license which the offender may have incurred

49 The provisions of sections 39, 40, 44, 45 and 46 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by, or of works belonging to [any Government in British India]*

50 No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector or of a person aggrieved by the same

Notes—An Electric Company whose seals on meter placed upon the premises of a consumer of electrical energy have been removed is a person aggrieved within the meaning of s 50 of the Act. 702 A under 689=1 at the

THE INDIAN ELECTIONS OFFENCE AND INQUIRIES ACT (XXXIX OF 1920)

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		14 Maintenance of secrecy of voting

* In British India the words within brackets have been substituted by G I Order 1937 In Burma for these words read the words the Government (vide G B C 1937)

THE INDIAN ELECTIONS OFFENCE AND INQUIRIES ACT, 1920

ACT NO XXXIX OF 1920

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL]

(Received the assent of the Governor General on the 14th September, 1920)

An Act to provide for the punishment of malpractices in connection with elections and to make further provisions for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act [or the Government of India Act 1935]*

[WHEREAS it is expedient to provide for the punishment of malpractices in connection with elections and to make further provisions for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act It is hereby enacted as follows —]†

Notes — The Committee are themselves firmly convinced that a complete and stringent Corrupt Practices Act should be brought into operation before the first election for the Legislative Council. There is no such Act at present in existence in India and the Committee are convinced that it will not be less required in India than it is in other countries. — *Report of the Select Committee*

PRELIMINARY

Short title and extent

[1 (1) This Act may be called the Indian Election Offences and Inquiries

Act, 1920 and

(2) It extends to the whole of British India]‡

PART I §

AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE

* In British India the words within brackets have been inserted by G. I. Order of 1937. But in British Burma these words have been omitted by G. B. Order of 1937.

† In British Burma the words within brackets have been omitted by G. B. Order of 1937.

‡ In Burma for section 1 read the following: I. This Act may be called the Election Offences and Inquiries Act.

§ Part I has been omitted in British India by Act I of 1938. But Part I given below is in force in Burma. —

PART I

AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE

2 (1) In section 21 of the Indian Penal Code after the tenth entry the following shall be inserted namely: Eleventh—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election and after Explanation 2 the

an election for the purpose of selecting any public authority of whatever character law prescribed as by election

(2) After Chapter IX of the same Code the following Chapter shall be inserted namely: —

2 [Amendment of Penal Code]—*Repealed in British India by Act I of 1938.*

3. [Amendment of the Code of Criminal Procedure]—*Repealed in British India by Act I of 1938.*

“CHAPTER IXA.

Of Offences relating to elections

“Candidate” “electoral right”
defined

171A. For the purposes of this Chapter—

(a) “candidate” means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat, provided that he is subsequently nominated as a candidate at such election,

(b) “electoral right” means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

Bribery.

171B (1) Whoever—

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right, or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section

(2) A person who offers, or agrees to give or offers or attempts to procure, a gratifica-

to obtain a gratification shall
ots a gratification as a motive
ong what he has not done

171C (1) Whoever voluntarily interferes or attempts to interfere with the free exercise,
Undue influence at elections of any electoral right commits the offence of undue
influence at an election

(2) Without prejudice to the generality of the provisions of sub section (1) whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine dis-

171D Whoever at an election applies for a voting paper or votes in the
Personation at elections name of any other person whether living or dead, or
in a fictitious name, or who having voted once at
such election applies at the same election for a voting paper in his own name, and whoever
abets, procures or attempts to procure the voting by any person in any such way,
commits the offence of personation at an election

171E Whoever commits the offence of bribery shall be punished with imprisonment
Punishment for bribery of either description for a term which may extend to
one year, or with fine, or with both

Provided that bribery by treating shall be punished with fine only

Explanation —“Treating” means that form of bribery where the gratification consists
in food, drink, entertainment, or provision

171F Whoever commits the offer
Punishment for undue influence
or personation at an election shall
fine, or

171G Whoever with intent to affect the result of an election makes or publishes any false statement in connection with an election is false and which he either knows or believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate shall be punished with fine

PART II

ELECTION INQUIRIES AND OTHER MATTERS

Definitions

4 In this Part, unless there is anything repugnant in the subject or context,—

[(a) "costs" means all costs, charges and expenses of, or incidental to, an inquiry.]*

171H Whoever without the sanction of the proper authorities makes any illegal payments in connection with an election

for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to five hundred rupees

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate he shall be deemed to have incurred such expenses with the authority of the candidate

171I Whoever being required by law to keep election accounts

Failure to keep election accounts may extend to five hundred rupees

Amendment of the Code of Criminal Procedure **3** (1) In section 196 of the Code of Criminal Procedure 1898 after the words Chapter VI the words 'or IX A' shall be inserted

(2) In Schedule II to the same Code after the entries relating to Chapter IX of the Indian Penal Code the following shall be added namely —

CHAPTER IXA —OFFENCES RELATING TO ELECTIONS

		Shall not arrest without warrant	Summons	Bailable	Not compoundable	Imprisonment of either description for one year or fine or both or if treating only, fine only	Presidency Magistrate or Magistrate of the first class
171 E	Bribery						
171 F	Undue influence and personation at an election	Do	Do	Do	Do	Imprisonment of either description for one year, or fine or both	Ditto
171 G	False statement in connection with an election	Do	Do	Do	Do	Fine	Ditto
171 H	Illegal payments in connection with elections	Do	Do	Do	Do	Fine of 500 rupees	Ditto
171 I	Failure to keep election accounts	Do	Do	Do	Do	Ditto	Ditto

* In British Burma paragraph (a) has been omitted by G. B. Order of 1937

[(b) "election" means an election to a Chamber of any Legislature or Legislative Council constituted under the Government of India Act, or the Government of India Act, 1935]*

(c) "inquiry" means an inquiry in respect of an election by Commissioners appointed for that purpose by the [Governor-General or Governor.]†

(d) "pleader" means any person entitled to appear and plead for another in a Civil Court, and includes [an advocate a vakil, and an attorney of a High Court]‡

Notes — 'Part 7' Government of India Act, 1935 gives statutory powers to the Government of India — *Statement of Objects and Reasons*

5 Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908,§ when trying a suit in respect of the following matters —

- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing commissions for the examination of witnesses

and may summon and examine *suo motu* any person whose evidence appears to them to be material, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 ||

Explanation — For the purposes of enforcing the attendance of witnesses the local limits of the Commissioners jurisdiction shall be the limits of [the Province in which the election was held] ¶

Notes — Under this section the Commissioners are given the powers of a Court under the Civil Procedure Code to enforce the attendance of witnesses and to record evidence and provision is made in regard to other ancillary matters — *Statement of Objects and Reasons*

6 The provisions of the Indian Evidence Act, 1872,** shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry

Application of Act I of 1872 to inquiries

Notes — This clause makes the Indian Evidence Act applicable to all inquiries and under clause 7 documentary evidence is not to be refused merely on the ground that a document is not duly stamped or registered — *Statement of Objects and Reasons*

* In British India paragraph (b) has been substituted by G. I. Order of 1937. But in British Burma for paragraph (b) read the following — (b) election means an election

to which the provisions of the Code of Civil Procedure, 1908, have been substituted by G. I. Order of 1937. (vide G. B. Order of 1937) Brackets read the words "an advocate of the

§ 5 of 1908
¶ In British Burma for the words within brackets read the words "British Burma" (vide G. B. Order of 1937)
** I of 1872

7 Notwithstanding anything in any enactment to the contrary
 Documentary evidence no document shall be inadmissible in
 evidence on the ground that it is not duly
 stamped or registered

8 (1) No witness shall be excused from answering any question
 as to any matter relevant to a matter in
 issue in an inquiry upon the ground that
 the answer to such question will criminate
 or may tend, directly or indirectly to criminate him, or that it will
 expose or tend directly or indirectly, to expose him to a penalty or
 forfeiture of any kind
 Provided that—

(i) no person who has voted at an election shall be required to
 state for whom he has voted and

(ii) a witness who in the opinion of the Commissioners has
 answered truly all questions which he has been required by them to
 answer shall be entitled to receive a certificate of indemnity, and
 such certificate may be pleaded by such person in any Court and
 shall be deemed to be a full and complete defence to or upon any
 charge under Chapter IXA of the Indian Penal Code * arising out
 of the matter to which such certificate relates nor shall any such
 answer be admissible in evidence against him in any suit or other
 proceeding

(2) Nothing in sub section (1) shall be deemed to relieve a person
 receiving a certificate of indemnity from any disqualification in
 connection with an election imposed by any law or any rule having
 the force of law

Notes — Clause 8 is based on section 59 of the Corrupt Practices Prevention Act
 1909. In answering any question
 may give a certificate of
 prevent his answers being

9 Any appearance, application or act before the Commissioners
 Appearance by pleader may be made or done by the party in
 person or by a pleader duly appointed to
 act on his behalf:

Provided that any such appearance shall if the Commissioners so
 direct be made by the party in person

Notes — The Bill further provides for appearances by pleaders for paying expenses
 of witnesses for costs and for their realisation — *Statement of Objects and Reasons*

10 The reasonable expenses incurred by any person in attending
 Expenses of witnesses to give evidence may be allowed by the
 Commissioners to such person, [and shall,
 unless the Commissioners otherwise direct, be deemed to be part of
 the costs] †

Notes This provision is made in accordance with the provision of the Civil Procedure
 Code

* S.A. of 1860

† In British Burma the words within brackets have been omitted by G.O. Order
 of 1937

*[11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.]

12 Any order made by the [Governor-General or Governor]† on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is [within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there]‡ and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Notes—Where no order was subsisting as regards cost the application for execution for cost should be dismissed. G Rang 470 = 1 I R 1928 Rang 245

13 Any person who has been convicted of an offence under section 171E or 171F of the Indian Penal Code§ or has been disqualified from the exercising of any electoral right, for a period of not less than five years on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

(a) being appointed to, or acting in, any judicial office

(b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached

(c) being elected or sitting or voting as a member of any local authority or

(d) being appointed or acting as a trustee of a public trust

[Provided that the Governor General in the case of an election to a Chamber of the Federal Legislature or the Indian Legislature, and the Governor, in the case of an election to a Chamber of a Provincial Legislature, may, in his discretion, exempt any such person from such disqualification.]||

* In British Burma s 11 has been omitted by G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' (vide G B Order of 1937)

‡ In British Burma for the words within brackets read the words 'in Rangoon before the Rangoon Small Cause Court' (vide G B Order of 1937)

§ XLV of 1860

|| Proviso to s 13 has been substituted in British India by G I Order of 1937. In Burma for the above proviso read the following proviso: 'Provided that the Governor may in his discretion exempt any such person from such disqualification.—Vide G B Order of 1937'

Notes — 'We do not understand why the disqualification should be confined to Magistrates and we have extended it to any judicial officer. As an offence under 171 G is now only punishable with fine we have deleted the reference to that section in the same clause'—*Report of the Select Committee*

14 (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both

[15 As respects elections to a Chamber of a Legislature constituted under the Government of India Act, 1935, this Part of this Act shall have effect subject to any relevant provision of any order in Council or rules made under that Act in relation to such elections]*

THE ELEPHANTS' PRESERVATION ACT (VI OF 1879)

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* In British India s 15 has been added by G. I. Order of 1937. In Burma for s 15 read the following —

S 15 This Part of this Act shall have effect subject to any relevant provision of any Order in Council or rules made under the Government of Burma Act, 1935, in relation to elections

THE ELEPHANTS' PRESERVATION ACT, 1879

ACT NO VI OF 1879 *

(Received the assent of the Governor General on the 22nd March 1879).

An Act for the preservation of wild elephants

Preamble WHEREAS it is expedient to provide for the preservation of wild elephants, It is hereby enacted as follows —,

Short title 1 This Act may be called the Elephants Preservation Act, 1879

Local extent It extends to the territories now respectively administered by the [Provincial Government]† of the United Provinces of Agra and Oudh, the Central Provinces,‡ and Coorg ,

and the [Provincial Government]† may, § extend it to any other local area * by notification in the [official Gazette]†

Commencement So far as regards the power to make declarations and rules, it shall come into force on the passing thereof In other respects it shall come into force on the first day of April, 1879

2 [Repeal—*Repealed by Act 8 of 1930*]

Killing and capture of wild elephants prohibited 3 No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(a) in defence of himself or some other person ,

(b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal , or

(c) as permitted by a license granted under this Act

* Act VI of 1879 has been extended to the following places Killah Sukindah in

and

and

and

and

and

and

and

1937.

† The words 'British Burma' after it have been omitted by G. I. Order of 1937

§ Certain words after this repealed by Act 38 of 1920 have been omitted

Notes — We do not understand why the disqualification should be confined to Magistrates and we have extended it to any judicial officer. As an offence under 171 G is now only punishable with fine we have deleted the reference to that section in the same clause. — *Report of the Select Committee*

14 (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both

15 As respects elections to a Chamber of a Legislature constituted under the Government of India Act, 1935, this Part of this Act shall have effect subject to any relevant provision of any order in Council or rules made under that Act in relation to such elections]*

Special provision as to elections under Government of India Act 1935

1935, this Part of this Act shall have effect subject to any relevant provision of any order in Council or rules made under that

THE ELEPHANTS' PRESERVATION ACT (VI OF 1879)

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| 6 | Power of Provincial Government to declare what are main roads and canals, and to make rules as to licenses |
| 7 | Penalty for contravening section 3 |
| 8 | License to be produced and shown on requisition of certain officers |
| 9 | Limitation of prosecution |
| 10 | Recovery of fees |

* In British India s 15 has been added by G. I. Order of 1937. In Burma for s 15 read the following —

S 15 This Part of this Act shall have effect subject to any relevant provision of any Order in Council or rules made under the Government of Burma Act, 1935, in relation to elections

THE ELEPHANTS' PRESERVATION ACT, 1879

ACT NO VI OF 1879 *

(Received the assent of the Governor General on the 22nd March 1879).

An Act for the preservation of wild elephants

Preamble WHEREAS it is expedient to provide for the preservation of wild elephants, It is hereby enacted as follows —

Short title 1 This Act may be called the Elephants Preservation Act, 1879

Local extent It extends to the territories now respectively administered by the [Provincial Government]† of the United Provinces of Agra and Oudh, the Central Provinces,‡ and Coorg,

and the [Provincial Government]† may, § extend it to any other local area * by notification in the [official Gazette]†

Commencement So far as regards the power to make declarations and rules, it shall come into force on the passing thereof In other respects it shall come into force on the first day of April, 1879

2. [Repeal—*Repealed by Act 8 of 1930*]

Killing and capture of wild elephants prohibited 3 No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(a) in defence of himself or some other person,

(b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal, or

(c) as permitted by a license granted under this Act

* Act VI of 1879 has been extended to the following places Killah Sukindah in Cuttack—See *Calcutta Gazette* March 15 1882 Pt I p 278 The District of Maun singh—See *Calcutta Gazette* May 23 1883 Pt I p. 416 The District of Midnapore See Ben R. & O.,

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1937.

† The words "British Burma" after it have been omitted by G. I. Order of 1937

§ Certain words after this repealed by Act 38 of 1920 have been omitted

Rights of Government with respect to certain elephants and tusks

[4 Every wild elephant captured and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government]*

5 The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district

License to kill and capture wild elephants

Power of [Provincial Government]† to declare what are main roads and canals

and to make rules as to licenses

‡6 The [Provincial Government]‡ may from time to time§ declare what shall be deemed to be main public roads and canals within the meaning of this Act, and make rules consistent with this Act for regulating—

(a) the grant and renewal of licenses under this Act,

(b) the fees (if any) in money tusks or captured elephants to be charged on such grant and renewal,

(c) the time during which such licenses shall continue in force and

(d) the conditions (if any) on which they shall be granted

All such declarations and rules shall be published in the [official Gazette]† and shall thereupon have the force of law

7 Whoever, in contravention of section 3 kills injures or captures, or attempts to kill, injure or capture any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned

Penalty for contravening section 3

and whoever breaks any conditions contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate

* S 4 has been substituted by Act II of 1883 (an Act to amend the Elephants Preservation Act 1879)

† The words within brackets have been substituted in British India by G I Order of 1937

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Substituted by C I Order of 1937

§ Certain words after this repealed by Act 39 of 1920 have been omitted

8 Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (a) and (b), may require him to produce and show a license granted to him under this Act

License to be produced and shown on requisition of certain officers

find any person killing, injuring or capturing, or attempting to kill injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (a)

and (b), may require him to produce and show a license granted to him under this Act

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted

Limitation of prosecution

10 The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land revenue

Recovery of fees

land revenue

THE INDIAN EMIGRATION ACT (VII OF 1922)

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THE INDIAN EMIGRATION ACT, 1922

ACT NO. VII OF 1922.

(Received the assent of the Governor General on the 5th March, 1922)

An Act to amend the law relating to emigration

WHEREAS it is expedient to amend the law relating to emigration, It is hereby enacted as follows —

Notes — *Vide* 35 Ind Cas 967 = 14 A L J 407

CHAPTER I

PRELIMINARY

Short title and extent

- [1 (1) This Act may be called the Indian Emigration Act, 1922
 (2) It extends to the whole of British India]*

Definitions

2 (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "dependant" means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant,

(b) "emigrant" means any person who emigrates or has emigrated or who has been registered as an emigrant under this Act and includes any dependant of an emigrant, but does not include—

(i) any person emigrating to a country in which he has resided for not less than five years or the wife or child of such person, or

(ii) the wife or child of any person who has lawfully emigrated when such wife or child departs for the purpose of joining such person,

(c) "emigrate" and "emigration" mean the departure by sea out of [British India]† of—

(i) any person who departs under an agreement to work for hire in any country beyond the limits of [India],† and

(ii) any person who is assisted to depart, otherwise than by a relative, if he departs, for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of [India]†.

* In Burma for section 1 substitute the following section 1 This Act may be called the Emigration Act (*Vide* G I Order of 1937)

† In British Burma for the words "British India" read the words "British Burma", and for the word "India" read the word "Burma" (*Vide* G B Order of 1937)

*[(cc) "emigrant ship" means any ship specially chartered for the conveyance of emigrants, or conveying emigrants exceeding a number to be prescribed]

Provided that the [Central Government]† may, by notification in the [official Gazette],‡ declare that ships conveying emigrants to any specified port shall not be deemed to be emigrant ships]

(d) "prescribe" means to prescribe by rules made under this Act,

(e) "work", with its grammatical variations, means skilled or unskilled work,

(f) "skilled work" means—

(i) working as an artisan ; or

(ii) working as a clerk or shop assistant , or

(iii) working for the purpose of any exhibition or entertainment , or

(iv) service in any restaurant, tea house, or other place of public resort , or

(v) domestic service , or

(vi) any other occupation which the [Central Government]† may, by notification in the [official Gazette] ‡ declare to be skilled work ,

(g) "unskilled work" includes engaging in agriculture.

(2) In case of any doubt or dispute arising otherwise than in the course of any legal proceedings, as to whether—

(a) any person is an emigrant, or

(b) any work is skilled or unskilled, or

(c) any person has been assisted otherwise than by a relative, within the meaning of this Act, the question shall be determined by such person and in such manner as the [Central Government]† may prescribe, and such determination shall be final

Clause (a) — We have revised the definition of dependant with the object for restricting an emigrant's dependants to his relatives. It is possible that in certain cases the dependant of an emigrant may not travel by the same ship as the emigrant and we have therefore omitted the words accompanying an emigrant. —*Report of the Select Committee.*

Clause (b) — In the definition of emigrant we have inserted the words and includes any dependant of emigrant which are in the Act of 1908. We have also excluded from the definition of emigrant two classes of persons to whom we consider that the Act should not apply. The first class consists of persons who have lived abroad as emigrants for five years and their families and the second class consists of the families of persons who have lawfully emigrated. —*Report of the Select Committee.*

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* Inserted by Act XXVII of 1927

† The words within brackets have been substituted in British India by G. I. Order of 1937. In British Burma for these words read the word 'Governor' (vide G. B. C. of 1937)

‡ The words within brackets have been substituted in British India by G. I. O. 1937. In British Burma for these words read the word 'Gazette' (vide C. B. of 1937)

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lect to the provisions of

Clause (f) —*Id.* 32 B 10 9 Dom L R 1059 7 Cr L J 239

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5 (1) In any specified area where there is not a Protector of Emigrants the [Central Government]* may appoint any person to perform all or any of the duties of a Protector of Emigrants under this Act

Power to appoint persons to exercise functions of a Protector

(2) Every person so appointed shall be a public servant within the meaning of the Indian Penal Code †

Select Committee

6 (1) The [Central Government]* may appoint one or more Medical Inspectors of Emigrants at any port from which emigration is lawful or at any other place, and, where more than one are appointed, may apportion their respective duties

Appointment of Medical Inspectors

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code †

Notes — If intending emigrants are collected at places other than a port from which emigration is allowed it is desirable that there should be statutory power to appoint Medical Inspectors at such places — *Report of the Select Committee*

7 The [Central Government]* may, for the purpose of safeguarding the interests of emigrants in any place outside [British India] ‡ appoint persons to be agents in such places, and may define their powers and duties

Agents in foreign countries

Notes — This provision is made only for safeguarding the interest of emigrants in foreign countries

8 The [Central Government]* may, for the purpose of assisting any Protector of Emigrants appointed by it or any person appointed by it under section 5, constitute an Advisory Committee in such manner as it may think fit, and may prescribe the procedure to be followed and the functions to be performed by such committee

Advisory Committees

Notes — In previous Acts there was no such provision. In this Act this omission has been supplied

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor', (vide G. B. Order of 1937)

† XLV of 1860

‡ In Burma for the words 'British India' read the words 'British Burma', (vide B. Order of 1937)

CHAPTER III

EMIGRATION FOR THE PURPOSE OF UNSKILLED WORK

9 [(1) Emigration for the purpose of unskilled work, shall not

Ports from which emigration
of unskilled workers is lawful

be lawful except from the ports of Calcutta
Madras, Bombay, Karachi, Negapatam,
Tuticorin and Dhanushkodi, and from such

other ports as the Governor General in Council may, by notification in
the [official Gazette],* declare to be ports from which emigration is
lawful]†

(2) The [Central Government]‡ may, by notification in the
[official Gazette],* fix for the purposes of this Act limits of any port
from which such emigration is lawful

Notes —‘ As there is a steady flow of emigrants to Ceylon and the Strait Settlements
from the ports of Tuticorin Nagapatam and Dhanushkodi we have thought fit to insert
those ports by name in the Bill —*Report of the Select Committee*

10 (1) Emigration, for the purpose of unskilled work, shall not

Countries to which emigration
of unskilled workers is lawful

be lawful except to such countries and on
such terms and conditions as the [Central
Government], ‡ by notification in the

[official Gazette],* may specify in this behalf

(2) No notification shall be made under sub-section (1) unless it
has been laid in draft before both Chambers of the [Central
Government], ‡ by a resolution of each Chamber
or with modifications and
agree but, upon such approval
e issued in the form in which it

has been so approved ||

11 (1) Where the [Central Government]‡ has reason to believe

Power to suspend emigration
of unskilled workers

that in any country to which emigration
for the purpose of unskilled work is lawful
plague or any other epidemic disease dan-

gerous to human life has broken out, and the emigrants if allowed to
emigrate to that country would be exposed to serious risk to life on
arrival there, he may, by notification in the [official Gazette],*
declare that emigration to that country for the purpose of unskilled
work shall cease to be lawful

[(2) Where the Protector of Emigrants for any port has reason
to believe that such a state of affairs as is described in sub section (1)
exists in any country to which emigration for the purpose of unskilled

work is lawful, it may, by notification in such manner as he thinks fit, declare that emigration to that country for the purpose of unskilled work from that port shall cease to be lawful pending a reference to the "Central Government"]*

*(3) The "Protector of Emigrants"† publishing a notification under sub-subsection (2) shall forthwith report such notification with the reasons for it to the [Central Government]‡ who shall thereupon publish a notification in the [official Gazette]§ confirming or cancelling the notification published by the "Protector of Emigrants"†]

Notes — "We consider that the Central Government should have concurrent powers with Local Governments under this clause as the information may reach the Central Government first. The re-drafting of clause 11 to give this power involves the drafting of clause 12." — *Report of the Select Committee*

12 Where the [Central Government]‡ is satisfied that the
 Revocation of prohibition ground on which a notification under sub-section (1) of section 11, [or a notification under sub-section (3) of section 11 confirming a notification of a "Protector of Emigrants"†]|| has been made with respect to any country, has ceased to exist, he may, by notification in the [official Gazette]§, prohibit, from a date, to that country for the purpose of unskilled work, emigration from that country for the purpose of unskilled work from a date to be specified in the

13 (1) The [Central Government]‡ may, by notification in the [official Gazette]§, prohibit, from a date, and for reasons, to be specified in the notification, all persons or any specified class of persons from emigrating to any specified country from [the territories under the administration of any "Provincial Government" ¶]** or any specified part thereof, for the purpose of unskilled work

(2) Every notification issued under this section shall be laid before both Chambers of the [Central Legislature]†† as soon as may be after it is made

Notes — "As emigration is a Central subject we consider that the prohibition should issue in the name of the Governor General in Council. Owing to the special interest taken by the Legislature in matters of emigration, we consider that reasons for issuing

* Sub section (2) of section 11 has been substituted in British India by G. I. Order of 1937. In Burma sub sections (2) and (3) have been omitted by G. B. Order of 1937.

† In British India the words within quotations have been substituted by G. I. Order of 1937.

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words excepting those in section 11 (3) read the word 'Governor', *Vide* G. B. Order of 1937.

§ The words within quotations have been substituted in British India by G. I. Order of 1937. In Burma for these words excepting those in section 11 (3) read the word 'Gazette', *vide* G. B. Order of 1937.

|| The words within brackets have been omitted in Burma by G. B. Order of 1937.

¶ In British India the words 'Provincial Government' have been substituted by G. I. Order of 1937.

** In British Burma for the words: the territories under the administration of any

1a' *vide* G. B. Order of 1937.

1b' been substituted by G. I. Order

1c' Legislature, (*vide* G. B. Order

CHAPTER III.

EMIGRATION FOR THE PURPOSE OF UNSKILLED WORK.

9 [(1) Emigration, for the purpose of unskilled work, shall not be lawful except from the ports of Calcutta Madras, Bombay, Karachi, Negapatam, Tuticorin and Dhanushkodi, and from such other ports as the Governor General in Council may, by notification in the [official Gazette],* declare to be ports from which emigration is lawful]†

(2) The [Central Government]‡ may, by notification in the [official Gazette],* fix for the purposes of this Act limits of any port from which such emigration is lawful

Notes — As there is a steady flow of emigrants to Ceylon and the Strait Settlements from the ports of Tuticorin Nagapatam and Dhanushkodi we have thought fit to insert those ports by name in the Bill — *Report of the Select Committee*

10 (1) Emigration, for the purpose of unskilled work, shall not be lawful except to such countries and on such terms and conditions as the [Central Government],‡ by notification in the [official Gazette],* may specify in this behalf

(2) No notification shall be made under sub-section (1) unless it has been laid in draft before both Chambers of the [Central Legislature]§ and has been approved by a resolution of each Chamber either without modification or addition, or with modifications and additions to which both Chambers agree, but, upon such approval being given, the notification may be issued in the form in which it has been so approved ||

11. (1) Where the [Central Government]‡ has reason to believe that in any country to which emigration for the purpose of unskilled work is lawful plague or any other epidemic disease dangerous to human life has broken out, and the emigrants if allowed to emigrate to that country would be exposed to serious risk to life on arrival there, he may, by notification in the [official Gazette],* declare that emigration to that country for the purpose of unskilled work shall cease to be lawful

(2) Where the Protector of Emigrants for any port has reason to believe that such a state of affairs as is described in sub-section (1) exists in any country to which emigration for the purpose of unskilled

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[In Burma after sub-section (2) of section 10 Insert apply to emigration to India — vide G O Order of 1937,

(3) This section does not

work is lawful, it may, by notification in such manner as he thinks fit declare that emigration to that country for the purpose of unskilled work from that port shall cease to be lawful pending a reference to the Central Government]*

*[(3) The "Protector of Emigrants"† publishing a notification under sub-subsection (2) shall forthwith report such notification with the reasons for it to the [Central Government]‡ who shall thereupon publish a notification in the [official Gazette]§ confirming or cancelling the notification published by the "Protector of Emigrants"†]

Notes — We consider that the Central Government should have concurrent powers with Local Governments under this clause as the information may reach the Central Government first. The re-drafting of clause 11 to give this power involves the drafting of clause 12. — *Report of the Select Committee*

12 Where the [Central Government]‡ is satisfied that the ground on which a notification under sub-section (1) of section 11, [or a notification under sub-section (3) of section 11 confirming a notification of a 'Protector of Emigrants'†] has been made with respect to any country has ceased to exist, he may, by notification in the [official Gazette]§, declare that emigration to that country for the purpose of unskilled work shall again be lawful from a date to be specified in the notification

13 (1) The [Central Government]‡ may, by notification in the [official Gazette]§ prohibit from a date, and for reasons to be specified in the notification all persons or any specified class of persons from emigrating to any specified country from [the territories under the administration of any "Provincial Government"]** or any specified part thereof, for the purpose of unskilled work

(2) Every notification issued under this section shall be laid before both Chambers of the [Central Legislature]†† as soon as may be after it is made

Notes — As emigration is a Central subject we consider that the prohibition should issue in the name of the Governor General in Council. Owing to the special interest taken by the Legislature in matters of emigration, we consider that reasons for issuing

* Sub-section (2) of section 11 has been substituted in British India by G. I. Order of 1937. In Burma sub-sections (2) and (3) have been omitted by G. B. Order of 1937.

† In British India the words within quotations have been substituted by G. I. Order of 1937.

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words excepting those in section 11 (3) read the word 'Governor'. Vide G. B. Order of 1937.

§ The words within quotations have been substituted in British India by G. I. Order of 1937. In Burma for these words excepting those in section 11 (3) read the word 'Official Gazette'.

G. B. Order of 1937
been substituted by G. I.

** under the administration of any
†† vide G. B. Order of 1937
been substituted by G. I. Order
of 1937.) Legislature (vide G. B. Order

the notification should be stated therein and that the notification should be brought to the notice of members of the Legislature by being laid on the table — *Report of the Select Committee*

14 A notification under section 10, section 11, section 12 or section 13 shall not affect any act done ^{Saving} offence committed, or legal proceedings commenced before the date on which such notification takes effect

CHAPTER IV

EMIGRATION FOR THE PURPOSE OF SKILLED WORK.

15 Emigration, for the purpose of skilled work, shall not be lawful except from a port from which ^{Ports from which emigration of skilled workers is lawful} emigration for the purpose of unskilled work is lawful and from such other ports as the [Central Government]* may by notification in the [official Gazette]†, specify in this behalf

16 (1) Whoever desires to engage, or to assist, any person to emigrate for the purpose of skilled work shall apply for the permission of the [Central Government]* and shall state in his application—

(a) the number of persons whom he proposes so to engage or assist,

(b) the place beyond the limits of [India]‡ to which each such person and his dependants are to proceed

(c) the accommodation to be provided for each such person and his dependants until their departure out of [India]‡ and during the voyage

(2) Whoever desires to engage any person for the purpose described in sub-section (1) shall, in addition to the information which he is required by that sub-section to supply in his application, further state therein—

(a) the provision to be made for the health and well-being of such person and his dependants during the period of the proposed engagement and for their repatriation at the end of such period,

(b) the terms of the agreement under which such person is to be engaged,

(c) the security in British India which he proposes to furnish for the due observance of such agreement and for the proper treatment of the person to be engaged.

17 On receipt

Applications how to be made

of

after such inquiry as it may deem necessary, grant the permission applied for on such terms and conditions of such fees (if any) as it thinks fit, or the decision of the [Central Government]

* The words within brackets have been substituted in British India by G. I. Order of 1937. In British Burma for these words read the word 'Governor' (vide G. B. Order of 1937).

† The words within brackets have been substituted in British India by G. I. Order of 1937. In Burma for these words read the word 'Gazette' (vide G. B. Order of 1937).

‡ In Burma for the word 'India' read the word 'Burma' (vide G. B. Order of 1937).

18 (1) Before any person departs from [British India]* in accordance with permission granted under section 17, the person by whom he has been engaged or assisted shall appear in person or by his duly authorised agent before the Protector of Emigrants at the port of embarkation with such first mentioned person and with any persons intending to accompany him as his dependants

Appearance of engaged persons before, and registration of names by Protector of Emigrants

(2) If it appears to the Protector of Emigrants—

(a) that permission to engage or assist such person has been duly obtained,

(b) in the case of an engagement, that the terms of the agreement under which such person has been engaged are in accordance with the terms of the permission granted and are understood by him, and

(c) that the conditions on which the permission was granted have been complied with

he shall register in a book to be kept for the purpose such particulars concerning the person engaged or assisted and his dependants (if any) and concerning the person engaging or assisting him and in such form, as the [Central Government]† may prescribe

19 Where such security as is referred to in sub-section (2) of section 16 has been furnished the [Central Government]† may, at any time after making such inquiry as it may deem necessary, pass orders in regard to the forfeiture of the security in whole or in part and the application of the same or any part thereof and, on the expiry of the period to which the agreement relates and on being satisfied that no ground exists for forfeiting the security in whole or in part order the return of the security or of any part thereof to the person by whom it was furnished or to his representative

Notes — This clause as introduced reproduces *verbatim* the contents of section 78 of the Indian Emigration Act 1908 but we consider that it should be amplified in order to make it clear that the security furnished by a person engaging an emigrant for skilled work shall in no case be returned to him until after the expiry of the period covered by the engagement, and until the Local Government is satisfied that the emigrant has been fairly treated — *Report of the Select Committee*

20 The [Central Government]† may, by notification in the [official Gazettee]‡ authorise a Protector of Emigrants to receive and dispose of applications made under this Chapter

Delegation to Protector of Emigrants of authority to receive or dispose of applications

Provided that an appeal shall lie to the [Central Government]† from every order passed by a Protector of Emigrants in exercise of the authority so conferred

21 (1) Where the [Central Government]† has reason to believe that sufficient grounds exist for prohibiting emigration of skilled workers to any country, he may, by notification in the

Power to prohibit emigration of skilled workers

* In Burma for India' read Burma and for British India read British Burma', (vide G. L. Order of 1937)

† The words within brackets have been substituted in British India by G. I. Order of 1937. But in British Burma read the word Governor for these words (vide G. B. Order of 1934)

‡ The words within brackets have been substituted in British India by G. I. Order of 1937. But in British Burma read the word Gazette (vide G. B. Order of 1937)

[official Gazette] * declare that such emigration to that country shall cease to be lawful from a date specified in the notification and from that date such emigration to that country shall accordingly cease to be lawful

(2) Every notification issued under this section shall be laid before both Chambers of the [Central Legislature]† as soon as may be after it is made

Notes — We have provided that the issue of a prohibitory notification shall be brought to the notice of the Legislature — *Report of the Select Committee*

22 Nothing in this Chapter shall apply in any case in which a person engages another to accompany him out of [India]‡ as his personal domestic servant

Saving

CHAPTER V

RULES

23 The [Central Government]§ may, by notification in the [official Gazette],* make rules consistent with this Act to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in such cases, and to provide for any other matter which the [Central Government]§ is by this Act empowered to prescribe

Notes — Emigration being a Central subject and some degree of uniformity being desirable in the different provinces we have thought fit to make the rule-making powers of the Local Government subject to the control of the Governor General in Council — *Report of the Select Committee*

24 (1) The [Central Government]§ may, by notification in the [official Gazette] * and after previous publication make rules for the purpose of carrying into effect the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

(a) the powers and duties of the several officers appointed by the [Central Government]§ under this Act

(b) 'the licensing supervision and control of persons employed in [British India]‡ engaged in causing or assisting persons to emigrate and in the conveyance and accommodation of emigrants and the prohibition of unlicensed person from being so engaged ||

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words substitute the words 'Gazette' (vide G B Order of 1937)

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Legislature' (vide G B Order of 1937)

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Legislature' (vide G B Order of 1937)

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Legislature' (vide G B Order of 1937)

|| Substituted by Act 16 of 1937

(c) the establishment, supervision and regulation of any places of accommodation provided for emigrants and for their medical care while resident there,

(d) the forms to be maintained and the returns to be submitted by persons licensed in accordance with rules framed under clause (b),

(e) the information to be furnished by persons licensed in accordance with rules framed under clause (b) to emigrants and the language in which such information is to be furnished,

(f) the production and examination of emigrants before District Magistrates or such other authorities as may be appointed in this behalf,

(g) the age below which persons of either sex may not emigrate except as dependants,

(h) the accommodation the provisions, fuel and other necessities, the medical stores and staff, the life saving and sanitary arrangements, and the records to be maintained on 'emigrant ships'*,

(i) the reception and the despatch to their homes of return emigrants,

(j) the fees, if any, payable by Emigration Agents to Protectors of Emigrants for each emigrant departing from India, and

(k) generally, the security, well-being and protection of emigrants "up to the date of their departure from India during a voyage on an emigrant ship"† and on their return to India

Notes.—* See clause (b) of the rules framed under section 10.

† See clause (k) of the rules framed under section 10.

Select Committee

CHAPTER VI

OFFENCES

25 (1) Whoever except in conformity with the provisions of this Act or of the rules made under this Act, emigrates or attempts to emigrate shall be punishable with fine which may extend to fifty rupees

(2) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act—

(a) makes, or attempts to make, any agreement with any person purporting to bind that person, or any other person, to emigrate, or

(b) "causes or assists or attempts to cause or assist"† any person to emigrate or to attempt to emigrate or to leave any place for the purpose of emigrating, or

(c) causes any person engaged or assisted by him, after grant of the permission referred to in section 17, to depart by sea out of [Br.]

* Substituted by Act 27 of 1927

† Substituted by Act 16 of 1932

India]* without registration of the particulars required by sub-section (2) of section 18, shall be punishable with fine, which may extend to five hundred rupees

†[(3) When in the course of any proceedings in connection with emigration in which a person licensed in accordance with rules framed under clause (b) of sub-section (2) of section 24 is concerned, a breach of the provisions of this Act or of the rules made under this Act is committed such person shall be liable to the punishment provided by sub-section (2) unless he shows that he was not responsible for and could not have prevented the omission of the breach

‡[(4) If any person commits an offence under this section, any police-officer may arrest him without warrant]

Notes — We have remodelled this clause and have reduced the maximum penalty for the comparatively minor offence of not being licensed to Rs 50. In sub clause (2) (a) clause (a) (b) to meet a doubt which arose in view of the definition of 'emigrating', and by the new sub clause (c) we have inserted a provision which had been inadvertently dropped out in the drafting of the Bill reproducing the contents of clause (c) of section 26 of the Indian Emigration Act 1908. — *Report of the Select Committee*

26 Whoever, by means of intoxication, coercion or fraud, Fraudulently inducing to causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

27 Whoever falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees or with both

28 No prosecution shall be instituted for any offence under this Chapter except with the sanction of a Protector of Emigrants or of a person appointed under section 5 and empowered in this behalf, or, where there is no Protector or person so appointed and empowered, of the District Magistrate

Sanction to prosecutions
Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intended emigrant and the complaint is filed by such emigrant, or intended emigrant or, on behalf of such emigrant or intended emigrant by the father, mother, husband, wife or guardian of such emigrant or intended emigrant or, if such emigrant or intended emigrant is a member of a joint Hindu family, by the manager of that family

* In Burma for the words British India read the words British Burma (vide G.O. Order of 1937)

† Old sub section 3 has been re numbered as sub section (4) and a new sub section (3) has been added by Act 16 of 1932

Notes — In adding the proviso to this clause we have followed a suggestion of the Allahabad High Court. It appears to us desirable that where an emigrant or intended emigrant has been victimised he or certain near relatives should have the right to complain. — *Report of the Select Committee*

29 All the powers for the time being conferred by law on officers of sea customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act

Power for Customs-officer to search and detain for purposes of Act

CHAPTER VII

SUPPLEMENTAL

30 (1) The departure by land out of [British India]* of any person under, or with a view to entering into, an agreement to work for hire, or when assisted, otherwise than by a relative, so to depart for the purpose or with the intention of working for hire or engaging in agriculture, in any country beyond the sea is prohibited

Prohibition of departure by land under an agreement to work for hire in some country beyond the sea

(2) Whoever departs, or attempts to depart, by land out of [British India]* in contravention of this section, shall be deemed to have committed an offence under sub-section (1) of section 25

(3) Whoever 'causes or assists or attempts to cause or assist' † any person to depart by land out of [British India]* in contravention of this section shall be deemed to have committed an offence under sub-section (2) of section 25

Sub clause (1) — The insertion in sub clause (1) is consequential on the insertion in the definition of emigrate and emigration in clause 2 — *Report of the Select Committee*

Sub clause (2) — The insertion in sub-clause (2) and the addition of sub clause (3) are consequential on the alterations effected in clause 25 — *Report of the Select Committee*

CHAPTER VIII

SAVINGS AND REPEAL

31 Nothing in this Act shall be deemed to apply to the departure out of [British India]* of—

- (i) any person who is neither [of Indian parentage] ‡ nor a subject of a State in [India],* or
- (ii) any person enrolled under the Indian Army Act, 1911 §

Notes — We have been advised that the despatch of an Expeditionary Force of the Indian army would be permissible under this Bill in accordance with the provisions of

* In Burma for the words 'India' and 'British India' read 'Burma' and the words 'British Burma' respectively (*vide* G. B. Order of 1937)

† Substituted by Act 16 of 1932

‡ In Burma for the words 'of Indian parentage' substitute 'a native of Burma', (*vide* G. B. Order of 1937)

§ After clause (ii) insert the words 'or the Burma Army Act in Burma', (*vide* G. B. Order of 1937)

Chapter IV, after a notification under clause 2 (1) (f). As the Bill was intended to apply either to combatants or to labour corps, we have definitely excluded them from its operations"—*Report of the Select Committee*

32. Notwithstanding anything contained in this Act, the provisions of this Act shall not apply for a period of twelve months from the date of the commencement of this Act to persons emigrating to Ceylon, the Straits Settlements, or any protected Native State adjoining the Straits Settlements.

Saving.

Notes—"The existing Act does not touch emigrants to Ceylon, the Strait Settlements and the Malay States, but on the passing of this Bill into law, emigration to these countries will be subject to the provisions of the law, and consequently emigration will be interrupted pending the issue of notifications under clause 10 the framing of rules under clauses 28 and 24 and the appointment of officers under the various clauses—*Select Committee's Report*.

33 [Repeal] *Repealed by S. 2 and Sch. of the Repealing Act, 1927 (12 of 1927)*

THE EPIDEMIC DISEASES ACT, (III OF 1897).

CONTENTS

PREAMBLE

Sections

- 1 Short title and extent
- 2 Power to take special measures and prescribe regulations as to dangerous epidemic disease

Sections.

- 2A Concurrent powers of Provincial Government
- 3 Penalty.
4. Protection to persons acting under Act

THE EPIDEMIC DISEASES ACT, 1897.

ACT NO. III OF 1897.

(Received the assent of the Governor-General on the 4th February, 1897)

An Act to provide for the better prevention of the spread of Dangerous Epidemic Disease

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic disease, It is hereby enacted as follows:—

Short title, and extent

1 (1) This Act may be called the Epidemic Diseases Act, 1897.

[(2) It extends to the whole of British India (inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti). *]†

Power to take special measures and prescribe regulations as to dangerous epidemic disease

2 (1) When at any time the [Provincial Government]† is satisfied that [India]§ or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the [Provincial Government].‡ if he thinks

that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take or require or empower any person to take such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as he shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed

(2) In particular and without prejudice to the generality of the foregoing provisions, the [Provincial Government]* may take measures and prescribe regulations for—

(a) the inspection of any ship or vessel leaving, or arriving at any port in [British India]† and such detention thereof or of any person intending to sail therein or arriving thereby, as may be necessary, and

(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease ‡

Notes.—As to the regulations section 2 sub section (1) was in effect the simple

the public

there is any reason to suspect the presence of plague. Detentions of the kind cannot be pleasant to the passengers but it is a precaution our Governments are bound to take if the commercial relations with the other states of the world are to be maintained on which the present circumstances of India so much depend. In this connection I may

to all Local Governments as under section 2 (2) (b) as to the inspection of travellers by railways. The Government of India are satisfied that if this inspection is to be of any use at all it must be a real and efficient inspection. —*Proceedings in the Council*

[2A When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in British India and for such detention thereof or of any person intending to sail therein, or arriving thereby as may be necessary.]§

ler of

3 Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code *

Notes —Under this section, it is unnecessary for the prosecution to prove in cases of disobedience that the accused's disobedience was likely to cause danger. The only important question is whether the disobeyed order was a lawful order made under this Act. 1913 M W N 928 14 M L T 443 For cases see also Rat Un Cr 978 1 Bom L R 223 24 M 70=2 Weir 158 Rat Un Cr C 966

4 No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act

Protection to persons acting under Act

THE EUROPEAN DESERTERS' ACT (XI OF 1856)
CONTENTS

PREAMBLE		Sections
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THE EUROPEAN DESERTERS' ACT, 1856.
ACT NO XI OF 1856

(Passed by the assent of the Governor General on the 11th April, 1856)

An Act for the better prevention of desertion by European Soldiers "and Airmen" † from the Land and Air Forces of [Her Majesty]‡ in [India] §

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land and Air Forces † in the service of [Her Majesty]‡ in [India]§ and for punishing persons who aid and encourage such deserters, It is enacted as follows —

1 If it shall appear that any officer soldier or airman †, being a deserter from the said Forces has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person

Penalty on master in certain cases if a deserter be concealed on board his ship

* N.L. of 1860
† Inserted by Act 10 of 1927
‡ In Burma for the words Her Majesty read the words His Majesty 111 G O Order of 1937
§ In Burma for the word India read the word Burma 111 C B Order of 1937

or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees

Provided always that no conviction for such offence as is herein before described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer, and in such charge it shall be lawful to state in the alternative that the party has, either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed

2 [Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-Town of Calcutta, Madras and Bombay, Magistrate, or person lawfully exercising the powers of a Magistrate in any port "within British India"† within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not, [and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction]‡

[3 No conviction, order or judgment of any Justice of the Peace shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state on the face of the conviction, order or judgment the evidence on which it proceeds, but the depositions taken, or a copy of them shall be returned with the conviction order or judgment, in obedience to any writ of *certiorari*, and, if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect the conviction, order or judgment shall be aided by what so appears in such depositions]§

4 Nothing in this Act contained shall prevent any [Justice of the Peace]‡ Magistrate or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act

Provided that no proceedings shall have been had against such persons in respect of the same offence under this Act

* In British India the words within quotations have been substituted by G I Order of 1937

† In Burma for the words within brackets substitute the following words "Any person who is liable to be punished for the offence of desertion from the service of the Government of Burma"

5 Whenever, on information given on oath or solemn affirmation where by law a solemn affirmation may be used instead of an oath, to the Commanding officer of any fort, garrison, station regiment or detachment, at any port or place within the territories of the East India Company in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer,

Commanding officer or Magistrate may issue warrants for apprehension of deserters

used instead of an oath, to the Commanding officer of any fort, garrison, station regiment or detachment, at any port or

place within the territories of the East India Company in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer,

or whenever on such information as aforesaid given to any [Justice of the Peace]* Magistrate or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

there shall appear reason to suspect that any European officer, "soldier or airman"† belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel or boat, or is concealed on shore at any such port or place within [British India]‡ it shall be lawful for such commanding officer or [Justice of the Peace]* Magistrate or person lawfully exercising the powers of a Magistrate as aforesaid to issue a warrant, authorising the person or persons to whom such warrant may be addressed, to enter into and search, at any time of the day or night, any such ship, vessel, or boat or any house or place on shore and to apprehend any such officer 'soldiers or airman"† and to detain him in custody in order to his being dealt with according to law

6 The warrant to be issued under the preceding section may be addressed to any European officer, 'soldier or airman"† of the said Forces, or to all constables peace-officers, and other persons who may be bound to execute the warrant

Warrant to whom to be addressed and by whom to be executed

addressed to any European officer, 'soldier or airman"† of the said Forces, or to all constables peace-officers, and other persons who may be bound to execute the warrant

of any [Justice of the Peace]* Magistrate or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act, and all such persons shall be bound to execute, perform and obey such warrant

7 Every person who shall be apprehended under any warrant under the 5th section of this Act shall be brought without delay before a [Justice of the Peace]* Magistrate, or person lawfully

Persons apprehended how to be dealt with

the Peace]* Magistrate, or person lawfully

exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses or by his own knowledge that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest 'military or air force station as the case may be,"† in order that he may be dealt with according to the law

* In Burma the words within brackets have been omitted by G B Order of 1937

† Substituted by Act X of 1927

‡ In British India the words within quotations have been substituted by G I Ord of 1937 but in Burma read the word Burma which was substituted by G B Order of 1937

THE EUROPEAN VAGRANCY ACT, 1874

ACT IX OF 1874.

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THE EUROPEAN VAGRANCY ACT, 1874.

ACT IX OF 1874.

(Received the Governor General's assent on the 7th April, 1874)

An Act to consolidate and amend the law relating to European Vagrancy

[WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India, It is hereby enacted as follows.]*

PART I

PRELIMINARY

Short title

1 This Act may be called the European Vagrancy Act, 1874

Local extent

[It extends to the whole of British India and to "British subjects to any Indian States."†

"And it shall come in force at once."

Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29 shall not come into in Coorg, or in the Andaman and Nicobar islands, or as regards British subjects in any Indian State, until and such day or respective days as the appropriate Government by notification in the Official Gazette appoints in this behalf*†]

2 § [Repeals—*Rep* by Act I of 1938]

Interpretation clause
"Person of European extraction"

3 In this Act—
["the appropriate Government means, in relation to British subjects in any Indian State, Central Government, and in other cases the Provincial Government,"]†

"Person of European extraction" includes—

(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony;

(b) the sons and grandsons of such persons;
but does not include persons commonly called Eurasians or East Indians

* In British Burma the preamble and the words within brackets have been omitted by G B Order of 1937.

† The words within quotations have been inserted in British India by G I. Order of 1937

substituted in British India by G. I

by Act I of 1939 In British Burma

(European Vagrancy), and No XVIII

powers deemed under

'vagrant' means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence

Vagrant

Master of a ship

"master of a ship" includes any person in charge of a decked vessel

And in Parts III and V of this Act "Magistrate means, [within the limits of the towns of Calcutta, Madras and Bombay a Presidency Magistrate* and outside those limits,]† a person exercising powers under the Code of Criminal Procedure* not less than those of a Magistrate of the second class

Magistrate

PART II

PROCEDURE

[4 Any police-officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other police officer to, and to appear before, the nearest Presidency Magistrate,* and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, "the nearest magistrate of the first class †]§

5 [The Presidency Magistrate* or]† 'Magistrate of the first class † shall in such case or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant and if he is satisfied that such person is a vagrant he shall record in his office a declaration to that effect

If he is further of opinion that the vagrant is not likely to obtain employment at once or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse and the said order

* See now Act V of 1898

† See now Act V of 1898

§

4

pany
first class

shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the workhouse, and to the [Governor]* of the workhouse for receiving and detaining such vagrant

6 Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place [subject to the 'Provincial Government,'† (or when the vagrant is in "any Indian State"‡) in any place subject to any adjacent "Provincial Government,"†]§ such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment

7 Upon his arrival at the place of employment, the vagrant shall be taken before the nearest [Presidency Magistrate§ or]|| 'Magistrate of the first class'¶ to whom the order for transmission shall be delivered

Such officer shall thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the police

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section 5

8 Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the workhouse, or under section 6 to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem

The [Presidency Magistrate§ or]|| 'Magistrate of the first class'¶ before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment

The [appropriate Government]** shall cause such allowance to be paid in such manner as it may

Power to give certificates or]|| "Magistrate of the first class"¶ may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand

* In Burma for the word 'Governor' read the word 'Superintendent' vide G B Order of 1937

† In British India the words 'any Indian State' have been substituted by G I Order of 1937

‡ In Burma for the words within the brackets read the words 'in Burma' vide G B Order of 1937

§ See now Act V of 1899

|| In Burma the words within brackets have been omitted by G B Order of 1937

¶ The words within quotations have been substituted by Act 12 of 1923

** In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate and within certain limits (mentioning them), nothing in sections 4, 5 6 and 7 shall apply to the holder of such certificate, and thereupon, so long as the certificate remains in force, nothing in sections 4 5 6 and 7 shall apply to such person within such limits as aforesaid.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed or as near thereto as circumstances will admit

Form of certificate

10 The [appropriate Government]* may from time to time, by notification in the [official Gazette]† invest any ‡ District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a 'Magistrate of the first class

Power to invest certain officials with jurisdiction of Justices under sections 5 7 8 and 9

PART III

GOVERNMENT WORKHOUSES

11 The [appropriate Government]* may provide workhouses with their necessary furniture and establishment, at such places as it may think proper, for the tempo
Provision of Government workhouse
or may, § certify any building, or part as a workhouse under the former part of workhouse for the purposes of this Act published in the [official Gazette]†, and part of a building shall, until the [appropriate Government]* otherwise orders, be deemed a Government workhouse under this Act

The [appropriate Government]* shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries

Scale of diet

12 Every such workhouse shall be under the immediate charge of a [Governor]||, (who shall be appointed* by the [appropriate Government])**

Superintendence of workhouses

Every such [Governor]|| shall, if the [appropriate Government]* think fit, be subject to the orders of a Committee of Management appointed from time to time by [such Government]††, or, in the

absence of a committee, to the orders of such officer as the [appropriate Government] * from time to time appoints in this behalf.

13 Every such [Governor]† may order that any vagrant admitted to the workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the [appropriate Government]*) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders

14 Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by [appropriate Government]*†

† The Governor may authorize any [Governor]† under the supervision and the [appropriate Government]* thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) —

(a) solitary confinement within the workhouse for any time not exceeding seven days,

(b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the [appropriate Government]* may prescribe,

(c) hard labour for any time not exceeding seven days,

(d) reduction of diet to such extent as the [appropriate Government]* may prescribe for any time not exceeding five days,

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months

15 The [Governor]† and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month

PART IV

REMOVAL FROM [INDIA]*

16 If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant the [Central Government]† may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from [British India]* in manner hereinafter provided, the cost of such removal being paid by [Central Government]‡ ,

or it may cause sections 23 and 30 to be read to him and may then release him

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the [Central Government]† binding himself—

(a) to proceed to such port in [British India]* as shall be mentioned in the agreement

(b) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the [Central Government]† for the purpose of being removed from [India]* at the expense of [the Central Government]§

(c) to remain on board such ship until she has arrived at her port of destination , and

(d) not to return to [India]* until five years have elapsed from the date of such embarkation ||

Every such agreement¶ shall be in the form set forth in the second schedule to this Act annexed or as near thereto as circumstances admit

18 [Power to perform agreement—*Repealed by G I Order of 1937 and G B Order of 1937 respectively*]

* In Burma for the word India read the word Burma and for the words British India read the words British Burma —*vide* G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the Governor —*vide* G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Government —*vide* G B Order of 1937

§ In British India the words the Central Government have been substituted by G I Order of 1937 In Burma for these words read the words the revenues of Burma ,

absence of a committee, to the orders of such officer as the [appropriate Government] * from time to time appoints in this behalf.

13 Every such [Governor]† may order that any vagrant admitted to the workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the [appropriate Government]*) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders

14 Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by [appropriate Government]*†

The [appropriate Government]* may authorize any [Governor]† of a workhouse to punish (under or not under the supervision and direction of a Committee of Management, as the [appropriate Government]* thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) —

(a) solitary confinement within the workhouse for any time not exceeding seven days ,

(b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the [appropriate Government]* may prescribe ,

(c) hard labour for any time not exceeding seven days ,

(d) reduction of diet to such extent as the [appropriate Government]* may prescribe for any time not exceeding five days ,

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months

15 The [Governor]† and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor * (vide G B Order of 1937)

† In Burma for the word Governor read the word Superintendent , vide C B Order of 1937

‡ Here certain words substituted by Act 4 of 1914 have been omitted by Act 39 of 1920

PART IV

REMOVAL FROM [INDIA]*

16 If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant the [Central Government]† may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from [British India]* in manner hereinafter provided the cost of such removal being paid by [Central Government]‡

or it may cause sections 23 and 30 to be read to him and may then release him

17. Any vagrant or other person of European extraction may enter into an agreement in writing with the [Central Government]† binding himself—

(a) to proceed to such port in [British India]* as shall be mentioned in the agreement

(b) there to embark on board such ship and at such time as is directed by [Central Government]† for [India]* at the expense of [the Cent

(c) to remain on board such ship until she has arrived at her port of destination, and

(d) not to return to [India]* until five years have elapsed from the date of such embarkation ||

Every such agreement¶ shall be in the form set forth in the second schedule to this Act annexed or as near thereto as circumstances admit

18 [Power to perform agreement—*Repealed by G I Order of 1937 and G B Order of 1937 respectively*]

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 G I Order of 1937 In Burma for these words read the words the revenues of Burma',
 G B Order of 1937

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PART V

PENALTIES

19 Any person refusing or failing to accompany a police-officer to, or to appear before, [a Presidency Magistrate*]† or "Magistrate of the first class"‡ for the purpose of preliminary inquiry when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

And any person who, when required under section 4 to accompany a police-officer to, or to appear before, a [Presidency Magistrate* or]† "Magistrate of the first class"‡ commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not a European British subject, be tried by a Magistrate for such offence

20 Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

or, who leaves a workhouse, under this Act, without permission from the Governor,

or who having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

21 Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months

* Act V of 1898

In Burma the words within brackets have been omitted by G. B. Order of 1937

† The words within quotations have been substituted by Act XII of 1923

22 Any person returning to [India]* within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the [Central Government]†, shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years

23 Any person of European extraction found asking for alms when he has sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence

24 Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest [Presidency Magistrate‡ or]§ "Magistrate of the first class"|| who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction

25 Every master of a ship landing or allowing to land in any part of [British India]¶ any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due inquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid

B Order of 1937.
d by G I Order
overnor", (vide G.

of
B

† See Act V of 1898

The [Central Government]* may from time to time, by notification in the [official Gazette]†, exempt from the operation of the former part of this section the masters of any class of ships on such terms as to the [Central Government]* seem fit, and either in respect of all or of any of the persons on board such ships

The [Central Government]* may in like manner revoke any exemption made under this section

[26 All fines recovered under this Act shall be paid to the credit of the Government of the Province in which the fine was imposed]‡

§[27. All prosecutions under this Act, other than prosecutions under section 22, may be instituted and conducted by such officer as the appropriate Government from time to time appoints in that behalf, and all prosecutions under section 22 may be instituted and conducted by such officer as the Central Government from time to time appoints in that behalf]

28 In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure|| in the case of offenders not being European British subjects

29. No proceeding under this Act shall be deemed invalid by reason only that the [Presidency Magistrate|| or]¶ Magistrate of the first class ** before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest

PART VI

MISCELLANEOUS

30 Any European British subject who upon the summary inquiry mentioned in section 5 has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall so long as he remains in [India],††

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for the the words within brackets read the word Governor vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for

the revenues of

7 In British

y such officer or of 1937

of 1937

** Substituted by Act 12 of 1923

†† In Burma for the word India read Burma vide G B Order of 1937

be subject* to the provisions of the Code of Criminal Procedure* applicable to a European not being a British subject.*

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction

31 Whenever any person of European extraction lands in [India]†, or being a non commissioned officer or soldier in Her Majesty's Army leaves that Army in [India],† under an engagement to serve any other person, or any Company, Association or body of persons in any capacity, and whenever a sailor of European extraction, not being a British subject is discharged from his ship in any [British Indian port],‡ and becomes§ a vagrant within one year after his arrival in [India]† or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to [pay to the Central Government the cost of his removal under this Act, and to that and any other Government in British India, all other charges incurred by the Government in question]|| in consequence of his becoming a vagrant

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the [Government concerned]¶
 Recovery of charges by the person Company, Association, body, owner or agent chargeable

32 When any person of European extraction lands in [India]†, being or having been during his passage to [India]†, or from one [Indian port]‡ to another, in charge of, or in attendance upon, any animal and becomes§ a vagrant, within one year after his arrival in [India]†, then the consignee of such animal, or the agents in [India]† for the sale of such animal, or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned, shall be liable to [pay to the Central Government the cost of such person's removal under this Act, and to that and any other Govern-

ment in British India all other charges incurred by the Government in question)* in consequence of his becoming a vagrant

Any such consignee or agent shall be entitled to charge the consignor or principal for [any payment to any Government]† under this section

For the purposes of this section 'consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and 'agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him

33 In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

34 The powers and duties conferred and imposed by [section 16]§ on [the Central Government]‡ may be exercised and performed by such class of officers as the [Central Government]‡ from time to time, by notification in the [official Gazette]¶, appoints in this behalf

[35 The powers and duties conferred and imposed by this Act on Magistrates§ and police-officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the [Central Government]‡ from time to time, by notification in the [official Gazette]¶, appoints in this behalf

'Provided that, in the case of any such place which is within the political charge of a [Central Government,]‡ the power conferred on the [Provincial Government]‡ by this section shall be exercised by that [Provincial Government]‡ by notification in the [official Gazette]¶.**)††

* In British India the same

substituted by G I Order of following —
under this Act, and all

substituted by G I Order the Government

1937 The words within brackets have been substituted by G I Order of read the word "Governor", vide

G I Order 1937 and G I B

|| Copy a words after the

1937

Order of
of 1927

††

36. The [Central Government and any Provincial Government, as respects matters with which they are respectively concerned] * may from time to time, make rules, consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the "official Gazette"† and shall thereupon have the force of law

THE FIRST SCHEDULE

(See section 9)

WHEREAS E. F. of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of months from the date hereof and within the Province (or District) of nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him unless he is found asking for alms, IN WHICH CASE this certificate shall be void

(Signed) G. II

Dated this day of 18 .

Presidency Magistrate ‡ for the Town of or "Magistrate of the first class." §

THE SECOND SCHEDULE.

(See section 17)

ARTICLES OF AGREEMENT made this day of 18, BETWEEN [the Governor

her port of destination.

4. The said G. D. shall not return to [India] until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by [the Governor General in Council (or, after the establishment of the Federation, the Governor General of India)]

the establishment of Federation, the t of the transit of the said G. D. to ence during such transit and during shall contract with the owner of the G. D. on board the said ship, and for ill embark as aforesaid.

THE INDIAN EXPLOSIVES ACT (IV OF 1884)

CONTENTS.

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- 1 Short title
- 2 Local extent
- 2 Commencement
- 3 [Repealed]
- 4 Definitions
- 5 Power to make rules as to licensing of the manufacture possession use sale transport and importation of explosives
- 5A Enhanced punishment for offences under sections 3 4 5 in certain cases
- 5B Enhanced punishment in certain cases
- 6 Power of Central Government to prohibit the manufacture possession or importation of specially dangerous explosives
- 7 Power to make rules conferring powers of inspection search seizure detention and removal

Sections

- 8 Notice of accidents
- 9 Inquiry into accidents
- 10 Forfeiture of explosives
- 11 Distress of vessel
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- 13 Power to arrest without warrant persons committing dangerous offences
- 14 Saving for manufacture possession use sale transport or importation by Government
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THE INDIAN EXPLOSIVES ACT, 1884

ACT NO IV OF 1884

[Received the assent of the Governor-General on 26th February 1884]

An Act to regulate the manufacture, possession use sale transport and importation of Explosives

WHEREAS it is expedient to regulate the manufacture possession use sale transport and importation of explosives It is hereby enacted as follows —

Notes — The object of the bill is to provide a comprehensive law regulating the manufacture keeping sale, conveyance and importation of explosives throughout British India — *Statement of Objects and Reasons*

Short title

[1 (1) This Act may be called the Indian Explosives Act 1884, and

Local extent

(2) It extends to the whole of British India]*

2 (1) This Act shall come into force on such day as the [Central Government]†, by notification in the [official Gazette]‡, appoints §

Commencement

3 [Repeal of portions of Act XII of 1875 — *Rep by Act X of 1889*]

Definitions

4 In this Act, unless there is something repugnant in the subject or context —

* In Burma for section 1 read the following — 1 This Act may be called the Explosives Act

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

§ Sub Sec (2) repealed by Act 12 of 1891 is omitted

(1) "explosive"—

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect

(b) includes fog-signals, fireworks fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive

(3) 'vessel' includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise.

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled :

(5) 'master' includes every person (except a pilot or harbour master) having for the time being command or charge of a vessel : provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship :

(6) "import" means to bring into [British India][†] by sea or land

Notes.—Crackers are included in clauses (a) and (b) but the accused can show that such fireworks are excluded from the operation of the Act 8 L W 626 *Potalkias* which are small packets, wrapped in a paper of coloured potash mixed with small pieces of *kanhar* and which explode with a slight report when thrown with force against a hard substance are not fireworks 8 P R 1910 Cr = 5 Ind Cas 911

5 (1) The [Central Government][‡] [may for any part of British India], § make rules consistent with this

Power to make rules as to licensing of the manufacture possession use sale transport and importation of explosives

Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say —

(a) that there shall be such license fees may be granted

other sums

's must be

subject to

which, licenses must be granted

(e) the period for which licenses are to remain in force, and

* For list of authorized explosives, see *Gazette of India*, 1911, Pt. II, p. 466

† In Burma for the words 'British India' read 'British Burma' vide G. B. Order of 1937

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor' vide G. B. Order of 1937

§ After this certain words repealed by G. I. Order of 1937 and G. B. Order of 1937 have been omitted. The words within brackets have been omitted in Burma by G. B. Order of 1937

|| For notification declaring that no fee shall be charged for licenses to possess explosives in reasonable quantities for blasting, see *Cent. Stat. B. and O. Vol. IV, p. 611*

(f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules

(3) [Rules made under this section may]* impose penalties on all persons manufacturing, possessing using selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees,

(b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees,

(c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees, and

(d) in any other case, two hundred rupees

Notes—A licensee is not at liberty to associate other persons with himself in the manufacture and sale of explosives 1 Weir 756 No license is necessary for possession of explosives of the nature of detonators and cartridges in moderate quantities U B R (1897 1901) Vol I 193 A master is liable for the act of servant even if unauthorized but done in the course of employment 29 Bom L R 153 see also 46 C L J 368 Throwdowns and Chinese crackers' are explosives A I R 1932 Mad 320=33 Cr L J 364

†[5A Notwithstanding anything contained in section 3, section 4 or section 5, if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932,† any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added]

Notes—This section provides for enhanced punishment for offences under sections 3 4 and 5 of the Explosive Substances Act 1908 in cases which are tried by Commissioners under the Bengal Criminal Law Amendment Act 1925 or by a special Magistrate thus arrived at by amendment in the Bengal Criminal Law Amendment Act 1925

Statement of Objects and Reasons

§[5B Notwithstanding anything contained in this Act, any person who makes or has in his possession any explosive substance under circumstances indicating that he intended that such ex-

Enhanced punishment in certain cases

* The words within brackets have been substituted in British India by G I Order of 1937 In Burma for these words read The authority making rules under this section may by these rules

Act XII of 1932 This

† Section 5B has been added by Ben Act VII of 1931 This section is in force only in the Presidency of Bengal and in no other Province

plosive substance should be used for the commission of any offence of murder shall, if he is tried by the Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added]

Power for [Central Government]* to prohibit the manufacture possession or importation of specially dangerous explosives

6 (1) Notwithstanding anything in the rules under the last foregoing section, the [Central Government]* may, from time to time, by notification in the [official Gazette]†—

(a)† prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the [Central Government]* it is expedient for the public safety to issue the notification §

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same, and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees

Power to make rules conferring powers of inspection search seizure detention and removal

7 (1) The [Central Government,]* may make rules|| consistent with this Act authorizing any officer, either by name or in virtue of his office—

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act,

(b) to search for explosives therein,

(c) to take samples of any explosive found therein on payment of the value thereof, and

* 1937 But in

read 'Gazette'

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(f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules

(3) [Rules made under this section may]* impose penalties on all persons manufacturing, possessing, using, selling transporting or importing explosives in breach of the rules, or otherwise contravening the rules

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees,

(b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees,

(c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees, and

(d) in any other case, two hundred rupees

Notes—A licensee is not at liberty to associate other persons with himself in the manufacture and sale of explosives 1 Weir 750 No license is necessary for possession of explosives of the nature of dynamite 1 Weir 750 (1897 1901) Vol I 193
done in the course of
Throwdowns and Chin
Cr L J 364

†[5A Notwithstanding anything contained in section 3 section 4 or section 5, if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932 † any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added]

Notes—This section provides for the punishment of offences under sections 3 4 and 5 of the Explosives Act, 1884, when tried by a special Magistrate or by a Commissioner appointed under the Bengal Criminal Law Amendment Act, 1925, or by a Commissioner appointed under the Bengal Suppression of Terrorist Outrages Act, 1932.

to be added in either case to be imposed for offences under sections 3 4 and 5 of the Act—
Statement of Objects and Reasons

‡[5B Notwithstanding anything contained in this Act, any person who makes or has in his possession any explosive substance under circumstances indicating that he intended that such ex-

* The words within brackets have been substituted in British India by G O Order of 1937 In Burma for these words read The authority making rules under this section may by these rules

† In the Presidency of Bengal s 5 A has been added by Ben Act XII of 1932 This section is not in force in any other Province

‡ Ben Act XII of 1932
§ Section 5B has been added by Ben Act XII of 1931 This section is in force only in the Presidency of Bengal and in no other Province

10 When a person is convicted of an offence punishable under this Act or the rules made under this Act the Court before which he is convicted may direct that the explosive or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed or any part of that explosive, ingredient or substance, shall with the receptacles containing the same be forfeited

Forfeiture of explosives

condition precedent
making it clear that
explosive in regard

11 Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with or in relation to that vessel the Court may in addition to any other power it may have for the purpose of compelling payment of the fine direct it to be levied by distress and sale of the vessel and the tackle apparel and furniture thereof or so much thereof as is necessary

D distress of vessel

12 Whoever abets within the meaning of the Indian Penal Code,* the commission of an offence punishable under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same shall be punished as if he had committed the offence

Abetment and attempts

Notes—As regards definition of abetment vide s. 107 of the Indian Penal Code

13 Whoever is found committing any act for which he is punishable under this Act or the rules under this Act and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port or any carriage ship or boat may be apprehended without a warrant by a Police officer or by the occupier of or the agent or servant of, or other person authorized by the occupier of that place or by any agent or servant of or other person authorized by the railway administration or conservator of the port and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate

Power to arrest without warrant persons committing dangerous offences

14 Nothing in this Act shall apply to the manufacture possession use sale transport or importation of any explosive—

Saving for manufacture possession use sale transport or importation by Government

- (a) by order of [any Government in British India]† or
(b) by any person employed [under any Government in British

* XLI of 1860

† In British India the words in brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word the Government

India]* in the execution of this Act, or as a keeper of a magazine artizan, soldier, sailor, 'airman'† policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869‡ in the course of his employment or duty as such

Saving of Indian Arms Act
1878

15 Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878§

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act ||

16 Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules

Provided that a person shall not be punished twice for the same offence

17 The [Central Government]¶ may, from time to time, by notification in the [official Gazette],** declare that any substance which appears to the [Central Government]¶ to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion shall be deemed to be an explosive within the meaning of this Act and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" †† in this Act

18 (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby

(2) The publication shall be made in such manner as the [Central Government],¶ from time to time, by notification in the [official Gazette]**, prescribes

* In British India the words within brackets have been substituted by G. I. Order of 1917. In Burma for these words read the words "under the Government".

† Inserted by Act 10 of 1937

‡ Act of 1869

§ Act of 1878

|| Liquid acetylene and acetylene in admixture with atmospheric air or oxygen and peric acid with certain exceptions has been declared to be an explosive within the meaning of this Act

1937

1937

1937

I Order of
of 1937
I Order of
1937

†† For mode prescribed see Genl Stat R & O

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified

(5) A rule made under this Act shall not take effect* until it has been published in the [official Gazette †]*

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires

Rules under the Indian Explosives Act, 1884, for the Manufacture, Possession, Sale Transport and Importation of Explosives

CHAPTER I

PRELIMINARY

1 SHORT TITLE —These rules may be called the Indian Explosives Rules 1914

SAVINGS —All previous
in said section are hereby
fees imposed or levied and
shall so far as they are
renewed, imposed levied

3 (1) caps for importation of paper
under such conditions

18 Bom L R 557=37 Ind Cas 491
18 Cr L J 139=

4 DEFINITIONS —In these rules unless there is anything repugnant in the subject or context —

(1) The Act means the Indian Explosives Act 1884 (IV of 1884)

(2) Ammunition means any explosive when the same is enclosed in any case or contrivance or is otherwise adapted or prepared so as to form—

(a) a cartridge or charge for small arms cannon or any other weapon or for blasting or

(b) a safety or other fuze for blasting or for shells or

repedo war rocket or any other

in a list of authorized explo

* After this certain words have been repealed by G I Order of 1937 and G B Order of 1937 respectively

† In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word Gazette, vide G D Order of 1937

nt of India and in

1 and construction
psule or case would

1e Commissioner of

Police

(11) elsewhere the Magistrate of the District

(6a) 'District Magistrate' includes in cases where the Local Government so directs the Additional District Magistrate in respect of such area as such Local Government may so order

(7) Fulminate means any chemical compound or mechanical mixture whatever employment in percussion from its extreme sensibility and readiness to undergo decomposition

gunpowder which is formed or with any carbonaceous matter or be not added to such gunpowder or mixed with any other

non explosive substance

and includes any explosive containing a perchlorate and not being a chlorate mixture fulminate or nitro compound as defined in this rule and such explosives as—

Chilworth special powder
AmmonalBobbinate and
Westfallitefrom the
artillery1 cl use
of rifles

t exceed

one inch

does not explode and
of such strength and
burning of such fuse

other officer as the

CHAPTER II

CLASSIFICATION OF EXPLOSIVES

5 CLASSES OF EXPLOSIVES—(1) For the purposes of these rules explosives shall be classified as follows namely —

Class 1	Gunpowder
Class 2	Nitrate mixture
Class 3	Nitro compound
Class 4	Chlorate mixture
Class 5	Fulminate
Class 6	Ammunition
Class 7	Firework

(2) When any explosive falls within more than one of the said classes it shall be deemed to belong exclusively to the latest of such classes

6 DIVISION OF NITRO COMPOUNDS—Nitro-compounds shall for the purposes of these rules be subdivided as follows namely —

- (a) Division 1, comprising—
 (i) such explosives as—

Ballistite,
 Blasting gelatine,
 Carbonite,
 Cordite,

Dynamite,
 Gelatine dynamite
 Gelignite,
 Nitro glycerine, and

Stonite, and

(ii) any chemical compound or mechanically mixed preparation which consists, either wholly or partly, of nitro glycerine or some other liquid nitro compound and

- (b) Division 2, comprising—
 (i) such explosives as—

Amberite No 2
 Ammonite,
 Bellite,
 Coopal's powder,
 E. C. sporting powder,

Gun cotton,
 Picric powder
 Roburite,
 Schultz's powder, and
 Ionite (or cotton powder),

and

(ii) any nitro compound, as hereinbefore defined, which is not comprised in Division 1.

7 DIVISION OF CHLORATE MIXTURES—Chlorate mixtures shall for the purposes of these rules, be sub divided as follows, namely —

- (a) Division 1, comprising—

- (i) such explosives as—
 permonite, and
 Polarite and

(ii) any chlorate preparation which consists partly of nitro glycerine or of some other liquid nitro-compound, and

- (b) Division 2, comprising—

- (i) such explosives as—
 Cheddite, and
 Steelite, and

(ii) and chlorate mixture, as hereinbefore defined, which is not comprised in Division 1

8 DIVISION OF FULMINATES —Fulminates shall, for the purposes of these rules, be sub-divided as follows, namely —

(a) Division 1, comprising such compounds as the fulminates of silver and of mercury, and preparations of those substances, such as are used in percussion-caps, and any preparation consisting of a mixture of a chlorate with phosphorus, or certain description of compounds of phosphorus, with or without the addition of carbonaceous matter, and any preparation consisting of a mixture of a chlorate with sulphur, or with sulphuret, with or without carbonaceous matter, and

(b) Division 2, comprising such substances as the chloride and the iodide of nitrogen, fulminating gold and silver, diazobenzol, and the nitrate of diazobenzol

9 DIVISION OF AMMUNITION.—Ammunition shall, for the purposes of these rules, be sub divided as follows, namely —

- (a) Division 1, comprising exclusively—

Safety cartridges,
 Safety fuzes for blasting,
 Railway fog signals, and,
 Percussion caps ; and

which does not

or other like

purposes,

Shells and torpedoes containing any explosive,
 Fuzes for blasting, other than safety fuzes,
 Fuzes for shells,
 Tubes for firing explosives, and
 War rockets,

which do not contain their own means of ignition ; and

(c) Division 3, comprising any ammunition, as hereinbefore defined, which contains its own means of ignition and is not included in Division 1, such as—

Detonators,
 Cartridges for small arms, which are not safety cartridges,

Fuzes for blasting which are not safety fuzes,
Fuzes for shells, and
Tubes for firing explosives,
containing their own means of ignition.

... own means of ignition
... forming part of the
friction or percussion

oses of these rules, be

sub divided as follows, namely —

(a) Division 1, comprising *firework compositions*, that is to say,—

(i) any chemical compound or mechanically mixed preparation of an explosive or inflammable nature which is used for the purpose of making manufactured fireworks and is not included in any of the foregoing definitions,

(ii) any star, and

(iii) (except as declared in the proviso to this rule) any coloured fire composition and

(b) Division 2, comprising *manufactured fireworks*, that is to say, any explosive of Class 1, 2 3 4 or 6 and any firework composition, when such explosive or composition is enclosed in any case or contrivance, or is otherwise manufactured so as to form a squib, cracker including Chinese crackers toy cap or amorco, serpent, rocket (other than a war-rocket), maroon, lance wheel, Chinese fire Roman candle or other article specially

contain
not to be
and not

Notes —“Throw downs and “Chinese crackers” are explosives A. I. R. 1932 Mad 320=35 M. L. W. 815=33 Or. L. J. 864

CHAPTER III

IMPORTATION

11 WHEN LICENCE TO IMPORT IS REQUISITE —No explosive shall be imported into British India by land or sea—

(i) unless it is an authorised explosive,

(ii) except under and in accordance with the conditions of a licence granted under these rules.

Provided that nothing in sub clause (ii) of these rules shall apply to—

(a) an explosive conveyed or landed under rule 21 or rule 22,

(b) any explosive coming under the head of ammunition as defined by the Indian Arms Act, 1878, imported by any person lawfully entitled under that Act or the rules when no

tons or
any time

12 PORTS AT WHICH IMPORTATION BY SEA IS PERMITTED —An explosive shall not be imported by sea except into the ports of—

Provided that—

(i) crackers may be imported into the ports of Negapatam and Moulmein and Chinese crackers into the port of Cuddalore

(ii) an explosive which has passed the test (if any) prescribed by these rules at Rangoon Madras or Bombay may be re imported—

(a) from Rangoon into the ports of Akyab, Moulmein, Sandoway, Kyaukpyu, Tavoy, Mergui and Victoria Point,

(b) from Madras into the ports of Tuticorin, Damlipatam, Cocanada, Negapatam, Mangalore, Gopalpore, Pamban and Masulipatam, or

the test pres
Straits Settle
w for the time
into the port of

being in force in those Settlements may be imported from Penang into the port of Victoria Point, and

(iv) an explosive shall not be imported into the port of Chittagong save with the previous sanction of the Governor General in Council and subject to such conditions and restrictions as he may in particular case impose

(v) an explosive included in the definition of ammunition in the Indian Arms Act 1878 may be imported into Port Blair

13 IMPORTATION OF EXPLOSIVES FROM PORTUGUESE INDIA —No explosives other than those required *bona fide* for blasting purposes shall be imported from Portuguese India

* 13A Importation of Explosives by land from Pondicherry and Karikal —No crackers shall be imported by land from the French Settlements of Pondicherry and Karikal

Testing of Explosives

14 TESTING OF IMPORTED EXPLOSIVES —No licence for the importation of an explosive shall be granted unless such explosive is certified by the testing authority to have passed the test (if any) prescribed by rule 16 for such explosives

15 EXPLOSIVE EXEMPTED FROM TESTING —No test shall be necessary—

(i) in the case of gunpowder, ammunition (Division 1) fulminates and fire works or

(ii) in the case of a nitrate mixture

Provided that—

(a) the Local Government or the licencing authority may direct that any nitrate mixture shall be subjected to such analysis by such officer as the Local Government may prescribe and

(b) Where an analysis has been prescribed under sub clause (a) such nitrate mixture is certified by the officer appointed as aforesaid to have passed such analysis

16 NATURE OF TEST PRESCRIBED —Any explosive not specified in rule 15 shall be subject to the test set forth in Schedule I as applicable to such explosive

17 EXEMPTION OF RE IMPORTED EXPLOSIVES FROM TESTING —(1) When an explosive required by rule 16 to be tested —

(a) has been tested at any of the ports at which importation by sea is permitted under rule 12 and has been imported thence or

(b) is re imported or imported under and in accordance with provisions (ii) and (iii) to rule 12

such explosive shall be exempted from any fresh test under these rules provided that it is accompanied by—

provided
is of
there

106
If by
case
propellants as

between the

samples as he may require

19 DISPATCH OF SAMPLES TO THE TESTING AUTHORITY —The officer taking samples of the explosive under rule 18 shall affix to such sample the name of the consignee

and such other distinguishing marks as he may think necessary and shall forward the same to the testing authority.

20. TESTING OF SAMPLES BY THE TESTING AUTHORITY.—The testing authority shall test or analyse the samples (as the case may be) and shall without delay forward to the licencing authority (through the Chief Customs Officer) a report under his signature certifying whether the explosive has satisfied the prescribed test or analysis.

Importation in anticipation of the grant of a licence to import.

21. IMPORTATION BY SEA IN ANTICIPATION OF THE GRANT OF A LICENCE.—Any

; or
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of Explosives in
or
Council, being

at any
; with

facture.

SIGNOR PRIOR TO
. 21 or 22 until the
the Chief Customs
magazine appointed
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the event of the ex-
directions as to its

disposal as the Local Government may issue

until a licence to import such explosives has been granted.

MAO
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shall
without
n this

o procedure laid down in
the licencing authority

The explosive shall
it has been conveyed
until the person in
that it may be so

CHAPTER IV.

TRANSPORT.

27. WHEN LICENCE TO TRANSPORT IS REQUISITE.—Explosives required *bona fide* for blasting purposes shall not be transported except under and in accordance with a

the
as he

- their importation
or other place of

(iii) the transport of explosives from the port or other place of import under rule 24 to the places indicated in that rule

Licences for the general transport of explosives for blasting

ation for a
shall be in
or places to

30. PROCEDURE IN TRANSPORTING EXPLOSIVES UNDER LICENCE FOR GENERAL TRANSPORT.—Every consignment of explosives transported under a licence in Form 2 shall be accompanied by a pass issued by the licensee in the Form prescribed in Form 2 ; and such pass shall (if the consignment be despatched by rail) be attached to the way bill or invoice, as the case may be

31. PROCEDURE IN ISSUING PASSES.—A copy of every pass issued under rule 30 shall forthwith be sent—

- (i) to the licencing authority, and
- (ii) when the place to which the consignment is sent is outside the local limits of the authority of the licencing officer to the officer indicated in rule 29

CHAPTER V.

MANUFACTURE, POSSESSION AND SALE.

Manufacture

32. WHEN LICENCE TO MANUFACTURE IS REQUISITE.—An explosive shall not be manufactured except under and in accordance with the conditions of a licence granted under these rules for such manufacture.

Provided that no licence under this rule to manufacture shall be necessary—

- (a) for the purpose of chemical
- ny safety cartridges to the
- or
- (c) in the case of any person who, holding a licence under these rules to possess an explosive—

33. CONDITIONS TO BE OBSERVED BY PERSONS FILLING CARTRIDGES.—The following conditions shall be observed by every person filling cartridges for small arms under clause

safety cartridges,

- (b) no work unconnected with the making of cartridges shall be carried on in the said

(a) if filling is done on magazine premises, the said room shall be detached from the magazine but shall be situated in the immediate neighbourhood thereof and at such distance therefrom as may be specified on the license by the authority granting the same, and

(c) the licensee shall give notice to the authority which granted his license that he intends to carry on such filling of cartridges as is allowed by this rule.

carried on more than one hundred pounds of gunpowder, or such quantity of any explosive as is prescribed by the Local Government in this behalf,

(b) no work unconnected with such adaptation or preparation shall be carried on in the said workshop while such adaptation or preparation is being carried on,

another description, and an explosive shall not be unmade or resolved into its ingredients, and

(c) the licensee shall give notice to the authority which granted his license that he intends to carry on such adaptation or preparation as it is allowed by this rule

Possession.

35. WHEN LICENSE TO POSSESS IS REQUISITE.—An explosive shall not be possessed except under and in accordance with the conditions of a license granted under these rules for possession

Provided that no license under these rules shall be necessary for the possession—

(a) of any explosive by a carrier or other person for the purpose of transport, when the same is being kept or transported in accordance with the provision of Chapter VII regulating the transport of such explosive, or

(b) of any explosive on board any ship in fulfilment of the requirements of the Merchant Shipping Acts or of any order or regulation thereunder for the time being in force, or

(c) by any person who is lawfully entitled under the Indian Arms Act, 1878 (XI of 1878), or the rules for the time being in force thereunder, to possess any explosive coming under the head of ammunition as defined in that Act, of such explosives in such quantities as may be prescribed by the said Act or rules, or when no quantities are so prescribed, in reasonable quantities for his own private use, or

(d) by any person, of explosives under and in accordance with the conditions of a permit granted under rule 68, rule 69, rule 70 or rule 71, or

(e) (elsewhere than in Burma) by any person, of manufactured fireworks in any quantity—

(i) in a municipality, not exceeding fifty pounds,

(ii) elsewhere not exceeding two hundred pounds,

when the same are obtained and intended by such person for immediate use and not for sale and are possessed by him for a period not exceeding fourteen days, and when they are kept in a substantial receptacle which is exclusively appropriated to the keeping of explosives and is closed and secured so as to prevent unauthorised persons from having access to the explosives, or

(ee) (in Burma) of manufactured fire works in any quantity not exceeding one pound for a period not exceeding three days on the occasion of such festivals and by members of such races or communities as the Local Government may by notification specify in this behalf,

(f) by any person for his own private use and not for sale, of—

(i) gunpowder in any quantity not exceeding thirty pounds, or

(ii) safety cartridges made with gunpowder and containing in all not more than one

powder and containing

not containing their
a thirty pounds of gun

powder, or

(i) cartridges for small arms, made with small arm nitro-compound and containing in all not more than ten pounds of small arm nitro compound, or

(ii) a small arm nitro-compound in any quantity not exceeding ten pounds, or

(iii) percussion caps, or

(iv) safety fuzes for blasting, or

(v) railway fog signals and flare lights when kept by railway company for use on their railway

gunpowder,

(g) of any explosive, which is not for sale and required solely for the navigation of aircraft, when kept in an aircraft for use in that aircraft, or for distribution to other air-

craft or to aerodromes or at an aerodrome for use at such aerodrome or for distribution to aircraft or to other aerodromes

Provided that maximum quantity so possessed shall not exceed fifty pounds when carried in an aircraft and one hundred pounds when kept at an aerodrome

Notes—Rule 35 is not applicable to toy firework 1930 M W N 73 A I R 1930 Mad 678 Phatakas are not explosives and are exempt from rule 35 A I R 1933 Sind 171 34 Cr L J 1076

36 SAVING OF GENERAL PROHIBITION UNDER THE ACT—Nothing in rule 32 or rule 35 shall be deemed to authorise the manufacture or possession of an explosive in contravention of any prohibition notified under section 6 of the Act and for the time being in force

Sale

37 WHEN LICENCE FOR SALE IS REQUISITE—An explosive shall not be sold except under and in accordance with the conditions of a licence granted under these rules for such sale

Provided that this rule shall not apply to the sale by any person of an explosive which he is lawfully entitled to possess for his own private use to any person who is lawfully entitled to possess the same

CHAPTER VA

FACTORIES

37 A (1) An applicant for a licence under Article 10 of Schedule II to manufacture any explosive in any quantity shall submit to the District Authority an application in writing which shall be accompanied by—

- (a) a site plan drawn to scale of the proposed factory and its surroundings showing—
 - (i) the distances between buildings forming part of the factory and
 - (ii) the distances between the factory or any part thereof and other buildings and works
- (b) construction plans of each building in the factory with particulars of construction
- (2) The application shall also specify—
 - (a) the nature of the process or processes to be carried on in the factory and each part thereof
 - (b) the maximum quantity of explosive to be manufactured during the period for

37 B On receipt of an application under rule 37 A the District Authority shall follow the procedure prescribed by rules 39 to 42 so far as it is applicable

37 C On completion of the inquiry prescribed by rule 42 the District Authority shall forward the application and the plans to the Chief Inspector of Explosives together with a report stating whether he—

- (a) has any objection on the ground that the applicant is not a suitable person for

subject to any such restriction

45 **SUBMISSION OF APPLICATION TO THE LICENSING AUTHORITY**—The said Form H shall be returned with the third column duly filled in by the applicant to the Chief Inspector of Explosives, who shall submit it to the licensing authority with his recommendations and with the draft licence and a statement in Form I showing the distances which after considering any representation made by the applicant when returning Form H to him he considers, should be kept clear round the magazine

46 **GRANT OF LICENSE**—The licensing authority may thereupon grant the licence as applied for with such modifications or restrictions (if any) as may be deemed proper, or may reject the application

47 **PROCEDURE ON GRANT OF LICENSE**—A copy of every licence granted under rule 46 shall be forwarded to the Chief Inspector of Explosives and the original licence shall be forwarded to the District authority if the licence has not been granted by him

48 **ENDORSEMENT OF LICENSE**—The District authority when satisfied that all the conditions prescribed in the licence in regard to the magazine have been complied with shall forthwith endorse the licence and unless and until so endorsed the licence shall not come into force

If it is decided not to endorse a licence the District authority shall forthwith inform the Chief Inspector of Explosives and the licensing authority (if the licence has not been granted by the District authority)

CHAPTER VII

LICENSES AND PERMITS

Grant of licences

49 **FORM OF LICENSE LICENSING AUTHORITIES AND FEES**—(1) Licences for the importation transport manufacture possession and sale of an explosive may be granted for any of the purposes

1. Division of

50 **CONDITIONS UNDER WHICH LICENSES ARE HELD**—(1) Every licence granted under these rules shall be deemed to be granted subject to the conditions contained therein

(2) Such conditions shall comprise all those specified in the prescribed Form and such further conditions as the licensing authority may impose

(3) Such conditions shall in the case of a licence granted by the Governor General in Council to manufacture any explosive in any quantity include all the conditions prescribed under these rules and in the Forms of licence for possessing such explosive in such quantity

Provided that notwithstanding anything contained in clause (2) or clause (3), the Local Government or the Governor General in Council as the case may be may, on the recommendation of the Chief Inspector of Explosives dispense with any of the conditions specified in the prescribed form of a licence

Amendment of licences

51 **AMENDMENT OF LICENSES**—(1) Provided that these rules are otherwise complied with every licence granted under them may be amended by the authority granting such licence

(2) A licensee who desires to have his licence amended shall submit it with an application stating the nature of the amendment and the reasons for it to the District

through the Chief Inspector of Explosives

Provided that the Chief Inspector of Explosives shall be consulted before a licence in Form J or finally granted by the District authority is amended

(3) The fee for the amendment of a licence shall be one rupee plus the difference

between the amounts made to licensee

Renewal of licenses

52 RENEWAL OF LICENSES ISSUED BY THE GOVERNOR GENERAL IN COUNCIL—The Local Government may, from time to time renew on the same or on altered conditions any license granted by the Governor General in Council for the manufacture of explosives

Provided as follows—

(i) No such renewal shall admit of the manufacture of any explosive other than that specified in the original license

(ii) every such renewal shall first be approved by an Inspector of Explosives, and

(iii) every such renewal shall be for a period not exceeding one year

53 RENEWAL OF LICENSES IN FORM J—(1) The authority granting a license in

to be renewed

56
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cense

applicable

54 RENEWAL OF LICENSES NOT PROVIDED FOR IN RULE 52 OR RULE 53—Every license for the manufacture possession or sale of explosives not provided for in rule 52 or rule 53 may unless the circumstances have so changed that the grant of a new license either would not be authorised under the Act and these rules, or is deemed objectionable by the licensing authority, be renewed on application made within the period specified in rule 56

55 RENEWAL OF LICENSE FOR GENERAL TRANSPORT FOR BLASTING EXPLOSIVES—Every license for the general transport of explosives may be renewed by the authority granting such license

56 TIME FOR MAKING APPLICATION FOR THE RENEWAL OF A LICENSE—Every application for the renewal of a license shall be made at a date not less than thirty days before the license expires and if the application is so made, the applicant shall be duly licensed or the transport license as the licensing authority issues the renewal of the license is refused has been

communicated to the applicant

57 FEE CHARGEABLE ON RENEWAL OF LICENSE—The fee chargeable for renewing any license shall be the fee originally chargeable under these rules on such license

Expiration of licenses

58 EXPIRATION OF LICENSE—(1) Every person licensed under these rules shall be liable to give notice of the expiration of his license to the licensing authority in the District in which he is licensed. If the licensing authority may think fit to give in regard to the possession or transport of the same

59 ISSUE OF TEMPORARY LICENSE WHEN ORIGINAL HAS EXPIRED OR BEEN REVOKED—(1) If a person licensed under these rules has applied for the renewal of his license and the licensing authority has refused to issue a new license, the person may be granted a temporary license for a period not exceeding one year

bears to a full year

60 DEATH ETC OF LICENSEE—(1) When any person holding a license under these rules dies or is adjudicated an insolvent or is otherwise disqualified by operation of law from continuing the business in respect of which the license was granted any person carrying on such business shall forthwith apply to the proper licensing authority for the grant of a new license in his own name for the unexpired portion of the original license

(2) No person applying for a license under clause (1) shall during such time as it is reasonably necessary for making his application and during the pendency thereof, be liable to any penalty under the Act or these rules for carrying on the business and acting

under the license so that he otherwise conforms with the provisions of the Act and these rules

(3) The fee chargeable on such new license shall be one rupee

Provided that no fee shall be charged on a new license in Form 2 or Form E or EE of Schedule III.

Forfeiture of licenses,

61. **LIABILITY OF LICENSE TO FORFEITURE**—Every licence granted under these rules shall be liable to be forfeited by the licensing authority on breach of any of the conditions contained therein, and also by the Local Government if at any time the continuance of the license in the hands of the licensee is deemed objectionable.

General Provisions as to licenses

(3) Copies of any license may, for the purposes of this rule be authenticated free of charge by any of the officers aforesaid or by the authority which granted the license

63 **VALIDITY OF LICENSE UNDER THE ARMS ACT**—Any authority granting a license under these rules may, if such authority thinks fit, direct by an order written on the license that it shall have the effect of a like license granted by the like authority under the Indian Arms Act, 1878 [XI of 1878].

64 **DUPLICATE LICENSE IN CASE OF LOSS OF LICENSE**.—When a license granted under these rules is lost or destroyed through no fault of the licensee, a duplicate may be granted to the licensee on payment of a fee of one rupee.

65. **MODE OF PAYMENT OF FEES**—All fees chargeable under these rules shall be collected by impressed stamps

Provided that, when such fees have been made over to any local authority they shall be collected in such manner as the local authority may from time to time direct

65 A **POWER TO EXEMPT FROM PAYMENT OF FEES**—The Governor General in Council may by general or special order, grant exemption from or reduction of any fee payable under this Chapter by any foreign Government in respect of any license for the importation by sea of explosives, when the explosives are intended to be transported in accordance with such license from the port of import to the territories of such Government

66 **DISCRETION OF AUTHORITY EMPOWERED TO GRANT, AMEND, OR RENEW LICENSES**—Every authority empowered to grant, amend or renew a license may, in its discretions,

(a) refuse to grant, amend or renew such license, or

(b) refer the application for orders to the Government (if any) to which it is subordinate

67 **EXECUTIVE CONTROL OVER LICENCING AUTHORITIES**—All subordinate authorities acting under this Chapter shall perform their duties subject to the control of their executive superiors and of the Local Government

Permits for temporary possession of explosives

68 **PERMIT FOR TEMPORARY STORAGE OF EXPLOSIVES IN A MAGAZINE IN EXCESS OF LICENSED QUANTITIES**—(1) A permit may be granted to the holder of a license in Form J or Form K to store in his magazine subject to the conditions of his license, for a period not exceeding one month, any quantity of

who issued the license and only if the quantity is due to unforeseen circumstances.

(3) The fee chargeable on such permit shall be two rupees.

69. **PERMIT FOR TEMPORARY POSSESSION OF FIREWORKS BY NON LICENSEE** ELSEWHERE THAN IN BURMA.—Elsewhere than in Burma a permit may be

any person to possess, in a municipality, manufactured fireworks in any quantity exceeding fifty pounds but not exceeding two hundred pounds and for any period not exceeding fourteen days, provided that such fireworks are obtained and intended by such person for immediate use and not for sale and are kept in a substantial receptacle which is exclusively appropriated to the keeping of explosives and is closed and secured so as to prevent unauthorised persons from having access to them.

Such permit shall be granted by a Magistrate of the first class or a Police Officer not below the rank of Assistant or Deputy Superintendent of Police.

70. PERMIT FOR TEMPORARY POSSESSION OF FIREWORKS BY NON LICENSEES IN BURMA.—In Burma, a permit may be granted to any person to possess manufactured fireworks in any quantity not exceeding two hundred pounds and for any period not exceeding fourteen days, provided such fireworks are obtained and intended by such person for immediate use and not for sale and are kept in a substantial receptacle which is closed and secured so as to prevent unauthorised persons from having access to them.

Such permit shall be granted by a Magistrate of the first class or a Police Officer not below the rank of Assistant or Deputy Superintendent of Police.

17. PERMIT TO POSSESS FIREWORKS IN EXCESS OF LICENSED QUANTITIES.—A person may be granted a permit to possess fireworks in excess of the quantities specified in Form B, Form C or Form D (in this respect), any quantity of

for a period not exceeding fifteen days—

by any Magistrate of the first class or any Police Officer not below the rank of an assistant or Deputy Superintendent of Police;

(b) in the Presidency of Bombay—

for a period not exceeding fifteen days—

by a Magistrate of the first class or (in the city of Bombay) by the Commissioner of Police

(c) in the United Provinces of Agra and Oudh—

for a period not exceeding fifteen days—

by the District Magistrate

71-A. A fee of one rupee shall be charged on a permit granted under rule 69, 70 or 71

CHAPTER VIII.

PRECAUTIONS TO BE OBSERVED IN TRANSPORTING EXPLOSIVES.

Part I.—General.

Packing and Marking.

“IMPROPERLY PACKED
explosives unless packed
the case of explosives
United Kingdom at

73. PACKING OF EXPLOSIVES.—Whatever be the nature of the explosive and to whatever Class it belongs, the following general rules shall be observed:—

(1) The interior of every package shall be free from grit and otherwise clean.

(2) Save as is provided in Schedule IV, there shall not be any iron or steel in the construction of any package unless the same is covered with suitable material so as effectually to prevent the exposure of such iron or steel.

(3) Every package, when actually used for the packing of one explosive, shall not be used for the packing of any other explosives or any other article or substance:

Provided that this rule shall not prevent the packing of inner packages containing a propellant in an outer package with inner packages containing gunpowder or other propellant.

Provided also that with ammunition (Division 1) there may be packed in the same package any article which is not of an inflammable or explosive nature, or liable to cause fire or explosion.

(4) Nothing in this rule shall be deemed to prohibit the use of an additional package, whether inner or outer, provided that such additional package shall not be of such character as shall have been prohibited in writing by the Chief Inspector of Explosives.

Explanation—Unless the context otherwise requires—

the expression "outer package" means a box barrel case or cylinder of wood metal or other solid material of such strength construction and character that it will not be broken or accidentally opened nor become defective or insecure whilst being conveyed and will not allow any explosive to escape

the expression "inner package" means a substantial case bag canister or other receptacle made and closed so as to prevent any explosive from escaping

the expression "propellant" means an authorised explosive of the nitro compound class adapted and intended exclusively for use as a propelling charge in cannon or small arms

74 PACKING OF AUTHORISED EXPLOSIVES—The method of packing authorised explosives of various classes respectively and the maximum amounts which may be packed in any one package shall be those indicated in Schedule IV

75 PACKING OF EXPLOSIVES WHICH ARE NOT AUTHORISED—Explosives which are not authorised explosives shall be packed subject to such special precautions as may be prescribed by the Chief Inspector of Explosives

76 LABELLING AND MARKING OF PACKAGES—(1) On the outermost package there shall be affixed in conspicuous characters by means of a brand or securely attached label or other mark the word "Explosive" the name of the explosives the number of the Class and of the Division to which it belongs and the name of the manufacturer or sender

(2) In the case of a nitro compound or of a chlorate mixture there shall be added the date of manufacture or issue from the factory or such sign indicating such date as may be approved by the Chief Inspector of Explosives

Provided that—

(a) in the case of cartridges or charges for cannon shells mines blasting or other like purpose which do not contain their own means of ignition the marking shall be as for the explosive when not so made up

(b) in the case of ammunition (Division 1) (safety fuzes excepted) there shall be added the words "Not liable to explode in bulk"

(c) in the case of pin fire cartridges for pistols there shall be added the words "Pin fire cartridges" and

"Explosive" and the number of the explosive the marking above

explosive so contained

77 RELAXATION OF PACKING RULES—To meet special cases the Chief Inspector of Explosives may by order in writing subject to such conditions (if any) as he may think fit to impose relax any of the conditions imposed by rules 73 to 76

Consignment

78 DESPATCH OF EXPLOSIVES TO CARRIER—(1) No person shall forward to any warehouseman or carrier any explosive unless he has given notice to such warehouseman or carrier of his intention to forward such explosive and has received an intimation from such warehouseman or carrier that he is prepared to receive such consignment

(2) Such notice shall state—

(a) the name and quantity of the explosive to be conveyed and

(b) the name and address of the consignee

79 RECEIPT OF EXPLOSIVES BY CARRIER—No warehouseman or carrier shall send such an intimation as is specified in rule 78 unless he is prepared to receive it and

(a) forthwith to despatch such explosive or

(b) to deposit it in an authorised magazine or at a place at which some person is licensed to possess such explosive in such quantity

Precautions to be observed in loading and unloading explosives

80 LOADING AND UNLOADING TO BE BY DAYLIGHT—No explosive shall be loaded on or unloaded from any carriage or vessel between sunset and sunrise

81 PROHIBITION OF NAFTED LIGHTS, ETC—During the loading or unloading of an explosive no person shall nor shall any person be allowed to bring into, have or use in, dangerous proximity to such explosive any fire or any article or liquid or substance which is liable to cause or communicate fire or explosion (such as charcoal matches or petroleum) or (unless the use of a light is unavoidable) any light

Provided that when the use of a light for the purposes of loading or unloading is unavoidable a light may be of such construction and character and in such position as to cause any danger from fire or explosion

82 PROHIBITION OF SMOKING —During the loading or unloading of an explosive no person shall smoke, nor shall be allowed to smoke on in or dangerously near to the carriage or vessel containing such explosive

83 PROHIBITION OF NAILED BOOTS ETC —During the loading or unloading of an explosive no person wearing boots or shoes with iron or steel nails heels or tips shall handle nor shall be allowed to handle such explosive

Loading

85 PROTECTION OF EXPLOSIVES IN TRANSIT—(1) Explosives shall be conveyed whenever possible in the interior of a carriage so enclosed on all sides with wood or metal or in the hold of a vessel having a close deck so closed as effectually to protect the explosives from communication of fire and

(2) When they cannot be so conveyed they shall be completely covered with a painted cloth tarpaulin or other suitable material so as effectually to protect the explosives from communication of fire

86 MAXIMUM CONSIGNMENTS ALLOWED —The quantity of explosives conveyed in any one carriage or vessel shall not exceed two thousand pounds

Provided that where the explosives are conveyed under the conditions set forth in clause (1) of rule 85 the quantity of explosives may exceed two thousand pounds but shall not exceed ten tons in any one carriage or twenty tons in any one vessel

87 EXPLOSIVES OF DIFFERENT KINDS TO BE KEPT APART —No explosive, which contains its own means of ignition shall be conveyed in any carriage or vessel which is being used for the conveyance of an explosive not of the same Class and Division unless it is sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another

88 DANGERS FROM FIRE AND WATER TO BE GUARDED AGAINST —Due precautions to secure against explosion taken to

89 PROTECTION FROM NAKED IRON OR STEEL —All iron or steel in the interior of the portion of the carriage or vessel with which the package containing any explosive is or may come in contact shall be effectually covered with leather wood cloth or other suitable material

90 EXPLOSIVES NOT TO BE SENT BY PUBLIC CARRIAGE OR VESSEL —No explosive shall be conveyed in any carriage or vessel plying for or carrying public passengers

91 CARRIAGE OR VESSEL TO BE IN CHARGE OF COMPETENT PERSON OR PERSONS —The carriage or vessel conveying an explosive shall be in charge of and constantly attended by some competent person, or by a sufficient number of competent persons

92 INTOXICATED PERSON NOT TO HAVE CHARGE OF CARRIAGE OR VESSEL —No person who is intoxicated shall nor shall he be permitted to have charge of or be in or attending to any carriage or vessel conveying explosives

93 DRIVING OR NAVIGATION TO BE CAREFUL —The person in charge of a carriage or vessel conveying an explosive shall not drive conduct or manœuvre such carriage or vessel in a dangerous or negligent manner

94 PROHIBITION OF DELAY IN TRANSIT —If the quantity of explosive conveyed in the carriage or vessel exceeds one hundred pounds the person or persons in charge of such carriage or vessel shall not stop or delay at any place for a longer time than may be reasonably necessary nor stop unnecessarily at any place where such stopping would be attended by public danger

conveyance
to cause
or for
no explosive
reasonable
attention

- (b) any quantity of gunpowder or of a nitro compound or of ammunition Class 6 Divisions 2 and 3 not exceeding five pounds or
 (c) any quantity of fireworks not exceeding ten pounds.

Exception and Savings

97 SAVING AS TO THE CONVEYANCE OF AMMUNITION AND CHINESE CRACKERS.—Nothing in rules 80 to 89 shall apply to ammunition (Division 1) and in the case of the transport by rail of Chinese crackers (Division 2 of Class 7—Fireworks) the provisions of

98 SAVING AS TO THE CONVEYANCE OF SMALL CONSIGNMENTS.—Nothing in rules

- (i) previous notice shall be given to the person in charge of the carriage or vessel

ate
 ceed

99A SAVING AS TO CONVEYANCE BY PASSENGER STEAMERS FLYING ON INLAND WATERS IN BURMA.—Nothing in rule 90 shall apply to the conveyance by passenger steamers plying on inland waters in Burma of any quantity of explosives of Class 1, 2 or 3 not exceeding 50 lbs contained in one full case

Provided that the consignment shall be packed in such manner as may from time to time be approved by the Chief Inspector of Explosives and stored on the steamer suitably and as far away as possible from inflammable cargo living quarters engines boilers or any other place where there is fire

99 SAVING AS TO CONVEYANCE BY RAILWAY.—Nothing in rules 78 79 90 91 and 94 shall apply to the conveyance of any explosive by railway

100 SAVING OF LIABILITY OF CARRIER AND OWNER AND MASTER OF A SHIP FOR

owner or master from any penalty under these rules

Part II—Railways

Consignment

101 CONVEYANCE BY RAILWAY.—Rules 102 to 136 shall apply to the transport of explosives by railway

102 CERTAIN EXPLOSIVES NOT TO BE CONSIGNED.—No explosive which a Railway Administration shall by any notice or regulation for the time being in force notify that they will not receive shall be brought sent or forwarded to or upon any railway of the said Railway Admin station

103 CERTIFICATE OF PACKING.—The consignor shall certify that the explosive has been packed in accordance with the rules in force in the United Kingdom or in British India

104 NOTICE OF THE CONSIGNMENT.—No person shall send for carriage upon any Railway any consignment of an explosive unless—

- (1) he has given to the officer in charge of the railway station previous notice in writing

are double packages and are so secured as to prevent movement during transit) they may be stowed in any number of layers not exceeding five

Provided that this rule shall not apply to safety cartridges for small arms packed in tin lined service pattern boxes

114 METHOD OF STOWING OF HIGH EXPLOSIVES—(1) Packages containing dynamite and other blasting explosives of the 3rd (nitro compound) Class or explosives of the 4th (chlorate mixture) 5th (fulminate) Classes or of the 1st Division of the 7th (firework) Class shall be stowed in one layer only and secured so as to prevent movement during transit

(2) Provided that if the packages of explosives are in rectangular form and are properly secured so as to prevent movement during transit they may be stowed in any number of layers not exceeding five

115 LOCKING OF VEHICLES—Vehicles shall in every case be locked when loaded with explosives

Delivery

116 DELIVERY TO CONSIGNEE—The consignee shall remove the explosives from the receiving station during the twelve hours of daylight following its arrival.

117 DISPOSAL WHEN CONSIGNEE FAILS TO TAKE DELIVERY—If the consignee does not remove the explosive within the time allowed by rule 116 the Railway Administration may return the explosive to the consignor at his risk and expense

118 PROTECTION OF EXPLOSIVES PENDING REMOVAL—Pending removal by the consignee or return to the consignor, the explosives shall be kept at a safe distance from the station buildings and (if unloaded) shall be completely covered with tarpaulins or other suitable material and if necessary shall be protected by a police guard.

Pour to open packages

119 OPENING OF SUSPECTED PACKAGES—The Railway Administration may at any time open or require to be opened at the risk and expense of the consignor any package which is upon any railway and which is suspected to contain explosives packed or consigned in contravention of any of these rules

120 DISPOSAL OF OPENED PACKAGES—The Railway Administration may return to the consignor at his risk and expense the contents of any package which is found during transit to have been packed or consigned in contravention of any of these rules

Precautions to be observed during loading and unloading

in rule 80 a
load booked to

122 LOADING AND UNLOADING TO BE CONTINUOUS—Subject to the provisions of rules 80 and 121, the loading and unloading of explosives when once begun shall be diligently proceeded with until the same is completed

123 PLACE OF LOADING AND UNLOADING—Vehicles containing explosives shall be loaded and unloaded on sidings at a safe distance from the station buildings

124 LOADING AND UNLOADING OF GOVERNMENT EXPLOSIVES—All explosives under despatch or receipt by a Government arsenal depot or factory shall be loaded or unloaded by Government servants employed in such arsenal depot or factory

125 MAXIMUM NUMBER OF VEHICLES TO BE DEALT WITH AT A TIME—Not more than five vehicles containing explosives shall be loaded or unloaded at any railway station, at any one time

126 TIME OF TRANSHIPMENT—All operations connected with the transshipment of explosives at junction stations shall take place during daylight

Marshalling and Shunting

127 MAXIMUM NUMBER OF VEHICLES TO BE HAULED IN ONE TRAIN—Not more than five vehicles containing explosives shall at any one time be hauled in the same train

HIGH EXPLOSIVES—No explosive of the 5th the 6th (ammunition) Class, or of the 7th train with any explosive not of the Class an efficiently separated therefrom to prevent

fire or explosion which may take place in one such explosive being communicated to another

- explosives shall be
close coupled to one
and followed by three

ing vehicles need not be close coupled to one another, and

(b) on the Nilgiri and Karaikkal Peralam Railways only one vehicle need intervene between the locomotive and vehicles containing explosives

130 SHUNTING —When the train is being marshalled vehicles loaded with explosives

constructed for the carriage of explosives

131 LIMIT OF SPEED IN SHUNTING —During the shunting of vehicles containing explosives the speed of all movements shall not exceed five miles an hour and loose shunts are prohibited

132 SUPERINTENDENCE IN SHUNTING —No shunting shall be carried on save under the superintendence of a duly authorised officer who shall see to the observance of rules 130 and 131

Brakes

133 BRAKES —If the vehicles employed in the transport of explosives are provided with brakes other than iron brakes the brakes thereon shall on no account be worked while the vehicles are running with a train nor shall brakes, other than iron brakes, on vehicles immediately adjoining such vehicles be worked while such vehicles are so running

Conveyance by Passenger train

cartridges up to the limit of 5 lbs

Provided that no detonators are carried in the same compartment

(c) detonators to the number of 200 if the amount of fulminate of mercury in the

provided in rule

3) and fog

the form of

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segment

but no other case shall contain more than 20 lbs of gunpowder and the total
by one train shall not exceed 80 lbs

135 CONVEYANCE OF EXPLOSIVES BY MIXED TRAIN —Any explosives may be conveyed by mixed train on any line or section on which goods trains are not running subject to the following conditions —

(1) that not more than one vehicle containing explosives shall be hauled at any one time

(2) that such vehicle shall be specially constructed and approved by the Railway

vehicle and the engine and

s and
trains are running, such

vehicle is detached from the train

Exemptions

136 SAVING AS TO CARTRIDGES FOR SMALL ARMS —Nothing in rules 109 125 and 127 shall apply to separate consignments of safety cartridges for small arms

CHAPTER IV

SUPPLEMENTARY

Powers of Search and Destruction

137 POWERS OF SEARCH AND DESTRUCTION —(1) Any of the officers mentioned in clause (2) may, within the areas specified in that clause but subject to the provisions of the Indian Arms Act 1878 (VII of 1878) and of any rules for the time being in force thereunder, in cases to which that Act applies—

(a) enter inspect examine any place carriage or vessel in which an explosive is being manufactured, possessed sold transported or imported under a licence granted under these rules or in which he has reason to believe that an explosive has been or is being manufactured possessed sold transported or imported in contravention of the Indian Explosives Act 1884 (IV of 1884) or of these rules and may enter inspect and examine any magazine or place in which explosives are stored under the provisions of rule 24

(b) search for explosives therein

(c) take samples of any explosive found therein on payment of the value thereof if payment can be made at the time the samples are taken and

(d) seize detain remove and, if necessary destroy or otherwise render harmless any explosive found therein in respect of which he has reason to believe that any of the provisions of the said rules or Act have been contravened

(2) The officers and areas referred to in clause (1) are —

Officers	Areas
The Chief Inspector and Inspectors of Explosives	In all parts of British India
All District Magistrates	Within their respective districts
All Magistrates subordinate to the District Magistrate	Within their respective jurisdiction
	In Presidency towns or their suburbs and in Rangoon
	the Within the respective areas over which their authority extends

(3) Whenever the Chief Inspector or any Inspector of Explosives or any Magistrate

1	2
(1) Importing an explosive in contravention of rules 11, 13 13 A 21, 22 23 and 24	Three thousand rupees
(2) Contravening any of the provisions of rule 18 rule 25 or rule 26 relating to importation of explosives	One thousand rupees
(3) Transporting blasting material in contravention of rule 27	One thousand rupees
(4) Manufacturing an explosive in contravention of rule 32	Three rupees
(5) Contravening any of the provisions of rules 33 and 34 relating to the manufacture of explosives	One thousand rupees
(6) Possessing an explosive in contravention of rule 35	One rupees.

1	2
(7) Selling an explosive in contravention of rule 37	Five hundred rupees
(8) Contravening a condition of a licence granted under article 1 article 2 or article 10 of Schedule II	Three thousand rupees
(9) Contravening a condition of licence granted under article 4 article 5 article 6 article 7, article 8, article 9 article 16 or article 17 of Schedule II	Five hundred rupees
(10) Contravening a condition of a licence granted under article 2 article 11 article 13, article 14 or article 15 of Schedule II	One thousand rupees
(11) Contravening any direction given under rule 59, the disposal of an explosive	One thousand rupees
(12) Failing to produce a licence (or authenticated copy thereof) or pass when called upon to do so under rule 62	Two hundred rupees
(13) " " " " " " " " of Chapter VIII	One thousand rupees
(15) " " " " " " " " 17, 21, 22, 23,	Two hundred rupees

Exemptions

187 SAVING AS TO ACTS DONE IN EMERGENCY... render liable to any penalty...

THE EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

CONTENTS

PREAMBLE	Sections
1 Short title and extent	explosive with intent to endanger life or property
2	5 Punishment for making or possessing explosives under suspicious circumstances
3	6 Punishment of abettors
4 explosion or for making or keeping	7 Restriction on trial of offences

THE EXPLOSIVE SUBSTANCES ACT, 1908

ACT NO. VI OF 1908

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL
(Received the G. G.'s Assent on the 8th June, 1908)

An Act further to amend the Law relating to Explosive Substances

WHEREAS it is necessary further to amend the law relating to explosive substances, It is hereby enacted as follows —

Short title, extent and application 1 (1) This Act may be called the Explosive Substances Act, 1908

[(2) It extends to the whole of British India and applies also to—
(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any native prince or chief in India]*

* In Part I of the Act for the purpose of the w

1) It extends to
na and

2 In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance, also any apparatus, machine, implement, or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance, also any part of any such apparatus, machine or implement

3 Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added

Notes—The essence of the offence under this section is unlawfully and maliciously causing by any explosive substance of an explosion of a nature likely to endanger life or to cause serious injury to property. 20 M L J 657 Malice in the legal acceptance of the word consist in a conscious violation of a moral duty. It means a wrongful act in this sense that the word is J 290=121 Ind Cas 726

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property

4 Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in [British India]* of a nature likely to endanger life or to cause serious injury to property, or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in [British India],* or to enable any other person by means thereof to endanger life or cause serious injury to property in [British India]*,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added

Notes—The term explosive substances includes any part of any apparatus machine

* connotes intention. But neither knowledge nor intention as to the use to be made of any object can be imputed to a person who is not conscious of its existence. A I R 1928

* In Burma for the words "British India" read "British Burma", vide G. B O of 1937.

Lab. 272=29 Cr. L. J. 481=9 Lab 531, see also 57 C. L. J. 213; A. I. R 1931 Lab 718

Clause (b)—Where in pursuance of a scheme to use bombs against the police the accused was shown to have made a bomb apparently to use it for a test or experiment, the accused is guilty under this clause. 146 Ind. Cas. 186=24 Cr. L. J. 1222=57 C. L. J. 218=A. I. R 1933 Cal 747 (S B)

Sanction—The fact that sanction of the Local Government is obtained only for a prosecution under s. 4 (b) does not make an alternative charge under s. 5 and conviction thereon is illegal. 1934 A. L. J. 1088=A. I. R. 1934 All 982=1931 Cr. C. 1302 (2)

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Scope—Under this section it is not necessary to come to any more definite finding than that the accused had possession of the explosive substance under suspicious circumstances. 20 M. L. J. 314. It is not the law that every person in a joint family should, merely be liable to be tried for

in a joint family residence,
16 C. W. N. 145. Where
is and the evidence showed
e the conspirators met and
sed was liable to be convicted

is regards evidence for conviction.; vide A. I. R.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Notes—The sixth clause is one which is perhaps partly covered by the permanent law of abetment. But it is desirable that public attention should be called to the fact that it is not only the man who makes an explosive or the man who places it, where an explosion takes place, who is guilty of a crime but that money for the purpose or in any necessary to the commission of a penalty as if he had been guilty

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the [Central Government.]*

Consent—The consent should state briefly the parts which constitute the offence. 31 P. R. C. 1910. and people from being vexed

* In British India the words within brackets have been substituted by G. O. 1, Order of 1937. In Burma for the words within brackets read the word "Governor", vide G. O. Order of 1937.

THE EXTRADITION ACT, 1870

(33 & 34 Vict., C 52)

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4 Provisions of arrangement for surrender	<i>Fugitive Criminals in British Possessions</i>
5 Publication and effect of order	17 Proceedings as to fugitive criminals in British possessions
6 Liability of criminal to surrender	18 Saving of law of British possession
7 Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character	<i>General Provisions</i>
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	SCHEDULES

THE EXTRADITION ACT, 1870

(33 & 34 Vict., C 52)

[9th August 1870]

An act for amending the Law relating to the extradition of Criminals

[Preamble and enacting words, Rep (U K) 50 & 57 Vict., c 52 (S L R)]

Preliminary

Short title

1 This Act may be called as "The Extradition Act, 1870"

2 Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by order in Council, direct that this Act shall apply in the case of such foreign state

Where arrangement for surrender of criminals made, Order in Council to apply Act

Her Majesty may, by the same or any subsequent order, limit the operation of the order and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions and qualifications as may be expedient

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette

Restrictions on surrender of criminals

3 The following restriction shall be observed with respect to the surrender of fugitive criminals —

(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he proves to the satisfaction of the Police Magistrate or the Court before whom he is brought on *habeas corpus* or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character

(2) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise

(4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender

Provisions of arrangement for surrender

4 An order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement—

(1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year, and

(2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act

5 When an order applying this Act in the case of any foreign state has been published in the London Gazette, this Act, after the date specified in the order, or if no date is specified after

the date of the publication, shall so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions and qualifications, if any, contained in the order, apply in the case of such foreign state

An order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act and that this Act applies in the case of the foreign state mentioned in

the order, and the validity of such order shall not be questioned in any legal proceedings whatever

6 Where this Act applies in the case of any foreign state every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act, (as the case may be), shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime

7 A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United Kingdom, shall be made to the Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order, under his hand and seal signify to a Police Magistrate that such requisition has been made, and require him to issue the warrant for the apprehension of the fugitive criminal

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he think fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody

8 A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime who is in or suspected of being in the United Kingdom, may be issued—

(1) by a Police Magistrate on the receipt of the said order of the Secretary of State and on such evidence as would in his opinion justify the issue of the warrant of the crime had been committed or

..

peace in any part
complaint and such
opinion of the
warrant if the crime

had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction

Any person issuing a warrant under this section without an order from a Secretary of State, shall forthwith send a report of the fact of such issue together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may if he think fit, order the warrant to be cancelled, and the person who have been apprehended on the warrant to be discharged

A fugitive criminal when apprehended on a warrant issued without the order of a Secretary of State shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought, before a Police Magistrate

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the Police

trate, unless the Police Magistrate, within such reasonable time as with reference to the circumstances of the case he may fix receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal

9 When a fugitive criminal is brought before the Police Magistrate, the Police Magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England

The Police Magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime

10 In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England the Police Magistrate shall commit him to prison, but otherwise shall order him to be discharged

In the case of a fugitive criminal alleged to have been convicted of an extradition crime if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the Police Magistrate shall commit him to prison, but otherwise shall order him to be discharged

If he commits such criminal to prison he shall commit him to the Middlesex House of Detention or to some other prison in Middlesex there to await the warrant of a Secretary of State for his surrender and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit

11 If the Police Magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days and that he has a right to apply for a writ of *habeas corpus*

Upon the expiration of the said fifteen days, or, if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ as the case may be or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal to order the fugitive criminal if not delivered on the decision of the Court, to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly

It shall be lawful for any person to whom such warrant is directed and for the person so authorized as aforesaid to receive, hold in cus-

tody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape

12 If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after the decision of the Court upon the return to the writ, it shall be lawful for any Judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody unless sufficient cause is shown to the contrary

13 The warrant of the Police Magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed

14 Depositions or statements on oath taken in a foreign state and copies of such original depositions or statements and foreign certificates of or judicial documents stating the fact of conviction may if duly authenticated, be received in evidence in proceedings under this Act

15 Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows —

(1) If the warrant purports to be signed by a Judge, Magistrate, or officer of the foreign state where the same was issued

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a Judge, Magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements or to be true copies thereof, as the case may require and

(3) If the certificates of or judicial documents stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the foreign state where the conviction took place, and if in every case the warrants, depositions, statements, copies certificates, and the judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice or some other minister of state A 1 all Courts of justice, justices, and magistrates shall take judicial

trate, unless the Police Magistrate, within such reasonable time as, with reference to the circumstances of the case he may fix receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal

9 When a fugitive criminal is brought before the Police Magistrate, the Police Magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England

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10 In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the Police Magistrate shall commit him to prison, but otherwise shall order him to be discharged

In the case of a fugitive criminal alleged to have been convicted of an extradition crime if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the Police Magistrate shall commit him to prison, but otherwise shall order him to be discharged

If he commits such criminal to prison he shall commit him to the Middlesex House of Detention or to some other prison in Middlesex there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit

11 If the Police Magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*

Upon the expiration of the said fifteen days, or, if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal to order the fugitive criminal if not delivered on the decision of the Court, to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly

It shall be lawful for any person to whom such warrant is directed and for the person so authorized as aforesaid to receive, hold in cus-

today, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant it shall be lawful to retake him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape

12 If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ it shall be lawful for any Judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody unless sufficient cause is shown to the contrary

13 The warrant of the Police Magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed

14 Depositions or statements on oath taken in a foreign state
Depositions to be evidence

Judicial documents stated, be received in e

15 Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows —

(1) If the warrant purports to be signed by a Judge, Magistrate, or officer of the foreign state where the same was issued

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a Judge, Magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements or to be true copies thereof as the case may require and

(3) If the certificates of or judicial documents stating the fact of conviction purports to be certified by a Judge, Magistrate, or officer of the foreign state where the conviction took place, and if in every case the warrants depositions, statements copies certificates, and the judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice or some other minister of state And all Courts of justice, justices, and magistrates shall take judicial notice

of such official seal and shall admit the documents so authenticated by it to be received in evidence without further proof

Crimes committed at Sea

16 Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom the following provisions shall have effect —

1 This Act shall be construed as if any stipendiary Magistrate in England or Ireland and any sheriff or sheriff's substitute in Scotland were substituted for the Police Magistrate throughout this Act, except the part relating to the execution of the warrant of the Police Magistrate

2 The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime

3 If the fugitive is brought on a warrant issued without the order of a stipendiary Magistrate or a sheriff or sheriff's substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies or in the place nearest to that port

Fugitive Criminals in British Possessions

17 This Act, when applied by order in Council, shall unless it is otherwise provided by such order extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require but with the following modifications namely —

(1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in a British possession may be made to the Governor of that British possession by a person recognised by that Governor as a consul general, consul or vice consul or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the Governor of such colony or dependency

(2) No warrant of a Secretary of State shall be required and all powers vested in or acts authorized or required to be done under this Act by the Police Magistrate and the Secretary of State or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone

(3) Any prison in the British possession may be substituted for a prison in Middlesex

(4) A Judge of any Court exercising in the British possession the like powers as the Court of Queen's Bench may exercise in England the power of discharging a criminal when not conveyed within two months out of such British possession

18 If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof so far as it relates to such foreign state and so long as such law or ordinance continues in force there, and no longer,

or direct that such law or ordinance, or any part thereof shall have effect in such British possession, with or without modifications an alterations as if it were part of this Act

General Provisions

19 Where, in pursuance of any arrangement with a foreign state, any person, accused or convicted of any crime which if committed in England, would be one of the crimes described in the first schedule to this Act, is surrendered by that foreign state, such person shall not until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded

20 The forms set forth in the second schedule to this Act or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law

21 Her Majesty may by order in Council, revoke, or alter, subject to the restriction of this Act any order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order

22 This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom and the royal Courts of the Channel Islands are hereby respectively authorized and required to register this Act

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor General of India [or as the case may be, the Governor of Burma]* to make treaties for the extradition of criminals with

* The words within brackets have been inserted by the Government of India (Adaptation of Act of Parliament) Order, of 1937,

Indian Native States, or with other Asiatic states continuous with British India [or with British Burma]* or to carry into execution the provisions of any such treaties made either before or after the passing of this Act

24 The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Foreign Tribunals

Power of foreign state to obtain evidence in United Kingdom

Evidence Act, 1856, †

and all the provisions of that Act shall be construed as if the term "civil matter" included a criminal matter, and the term "cause" included a proceeding against a criminal

Provided that nothing in this section shall apply in the case of any criminal matter of a political character

25 For the purposes of this Act, every colony, dependency and constituent part of a foreign state and every vessel of that state, shall (except where expressly mentioned as distinct in

Foreign state includes dependencies

this Act) be deemed to be within the jurisdiction of and to be part of such foreign state

26 In this Act, unless the context otherwise requires the term

Definition of term 'British possession'

'British possession' means any colony, plantation, island territory or settlement within Her Majesty's dominions, and not within the United Kingdom, the Channel Islands, and Isle of Man and all colonies, plantations, island territories, and settlements under one Legislature, as hereinafter defined, are deemed to be one British possession

The term "Legislature" means any person or persons who can

'Legislature'

legislatures as well as a central

The term 'Governor'

'Governor'

exercise legislative authority in a British possession, and where there are local legislatures, means central legislature, only

means any person or persons administering the government of a British possession ‡

The term "extradition

'Extradition'

crime, means a crime which, if committed in England or within English jurisdiction would be one of the crimes described in

the first schedule in this Act

The terms 'conviction' and 'convicted' do not include or refer to

'Conviction'

a conviction which under foreign law is a conviction for contumacy, but the term

'accused person' includes a person so convicted for contumacy

* The words within brackets have been inserted by the Government of India (Adaptation of Acts of Parliament) Order of 1937

† 19 & 20 Vict. c. 113

‡ Certain words after this repealed by the Government of India (Adaptation of Acts of Parliament) Order 1937 have been omitted

The term "fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions, and the term "fugitive criminal of a foreign state" means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of the state

'Fugitive criminal of a foreign rule

The term "Secretary of State" means one of Her Majesty's principal Secretaries of State Rep (U K) by 56 & 57 Vict c 54 (S L R)

' Secretary of State

The term 'Police Magistrate' means a Chief Magistrate of the metropolitan Police Courts, or one of the other Magistrates of the metropolitan Police Court in Bow Street

' Justice of the Peace

The term 'Justice of the Peace' includes in Scotland any sheriff, sheriff's

substitute, or Magistrate

The term "warrant" in the case of any foreign state, includes any judicial document authorizing the arrest of person accused or convicted of crime

Warrant

Repeal of Acts

27 The Acts specified in the third schedule to this Act are hereby repealed as to the whole of Her Majesty's dominions, and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed) shall apply (as regards crimes committed either before or after the passing of this Act) in the case of the foreign states with which those treaties are made in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act, and as if such order had been directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act *

Repeal of Acts in third schedule

SCHEDULES

FIRST SCHEDULE †

(List of Crimes)

Manslaughter
Counterfeiting and altering money and uttering counterfeit or altered money
Forgery counterfeiting and altering and uttering what is forged or counterfeited or altered
Embezzlement and larceny

* Part omitted was repealed by 46 and 47 Vict c 39 (S L R)

† Part omitted was repealed by 46 and 47 Vict c 39 (S L R) the Act is to be construed as if there were included s 28 of 36 rted By 6

Of the ... by false pretences.

... director, or member, or public
... time being in force.

Rape.

Abduction.

Child stealing.

Burglary and house-breaking

Arson.

Robbery with violence.

Threats by letter or otherwise with intent to extort.

Piracy by law of nations

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

Form of order of Secretary of State to the Police Magistrate.

To the Chief Magistrate of the metropolitan Police Courts or other Magistrate of the metropolitan Police Court in Bow Street [or the stipendiary Magistrate at ...].

Whereas, in pursuance of an arrangement with ... referred to
in an Order of Her Majesty in Council dated the ... day of
requisition has been made to me.
Secretaries of State, by ... one of Her Majesty's principal
for the surrender of ... the diplomatic representative of
accused [or convicted] of the commission of the crime of
late of ... within the jurisdiction of

under my hand and seal, signify to you that such requisition has been made, and require
you to issue your warrant for the apprehension of such fugitive, provided that the conditions
of the Extradition Act 1870, relating to the issue of such warrant, are in your judgment
complied with.

Given under the hand and seal
of the undersigned, one of Her Majesty's principal Secretaries of State this day of 18.

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police district To all and each of the constables of the
[for county or borough of] to wit. metropolitan police force [or of the county or
borough of]

Whereas the Right Honourable
one of Her Majesty's principal Secretaries of State, by order under his hand and seal, hath
late of
jurisdiction
to apprehend
in the
tribunal sitting
of the said
of the metro-

Form of Warrant of Apprehension by Order of Secretary of State.

Metropolitan police district [or To all and each of the constables of metropolitan
county or borough of] to wit. police force [or of the county or borough of].

Whereas it has been shown to the undersigned one of Her Majesty's Justices of the
Peace in and for the metropolitan police district [or the said county or borough
of] that ... late of
[or convicted] of the commission of the crime of ... is accused [or
jurisdiction of ... within the

This is therefore to command you in Her Majesty's name forthwith to apprehend the
said ... and to bring him before me or some other Magistrate sitting at this
Court [or one of Her Majesty's Justices of the Peace in and for the county or borough] of

* Note—Alter as required.

to be further dealt with according to law for which this shall be your warrant
Given under my hand and seal at Bow Street one of the Police Courts of the metropolis
[or in the county or borough] this day of 18

Form of Warrant of bringing Prisoner before the Police Magistrate

To _____ constable of police force of _____
County or borough] of to wit _____ and to _____ all other police officers in
the said county [or borough]

Whereas the said county [or borough] late of _____ accused [or alleged to be convicted] of the commission of the crime _____ within the jurisdiction

Majesty's name forthwith to
 warrant

Given under my hand and seal at
in the county [or borough] aforesaid this
day of 18 J P.

Form of Warrant of Committal

To
Metropolitan police district } 'one of the constables of the metropolitan force,
[or the county or borough of] [or of the police force of the county or borough of] and to
[] the keeper of the Be it
[] to wit [] day of [] in the year
remembered that on this
of our Lord [] late of [] ' is brought

the ground of his being accused (or convicted) of the commission of the crime of _____ within the jurisdiction of _____, and for as much as no sufficient cause has been

said _____ into your custody and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act for which thus shall be your warrant

Given under my hand and seal at Dow Street one of the police courts of the
metropolis [or at the said] this day of 18 .
J P

Form of Warrant of Secretary of State for surrender of Fugitive

To the keeper of _____ and to _____
 WHEREAS _____, late of _____, accused [or convicted] of
 the commission of the crime of _____ within the jurisdiction of _____,
 was delivered into the custody of you _____, the keeper of _____, by
 warrant dated _____, pursuant to the Extradition Act, 1870

Now I do not hereby, in pursuance of the said Act order you, the said keeper to deliver the body of the said _____ into the custody of the said _____, and I command you the said _____ to receive the said _____ into your custody, and to convey him within the jurisdiction of the said _____ and there place him in the custody of any person or persons appointed by the said _____ to receive him for which this shall be your warrant

Given under the hand and seal of the undersigned, one of Her Majesty's principal Secretaries of State this _____ day of _____ 19____.

THIRD SCHEDULE

Year and Chapter

Title

* 6 & 7 Vict c 75	<i>An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders</i>
6 & 7 Vict, c 76	<i>An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders</i>
8 & 9 Vict c 120	<i>An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders</i>
* 25 & 26 Vict c 70	<i>An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrenders of Criminals</i>
29 & 30 Vict c 121	<i>An Act for the amendment of the law relating to treaties of extradition</i>

THE EXTRADITION ACT, 1873

(36 & 37 Vict, C. 60)

CONTENTS

1 Construction of Act and short title	5 Power of taking evidence in United Kingdom for foreign criminal matters
2 Explanation of section 6 of 33 and 34 Vict c 52	6 Explanation of section 16 of 33 & 34 Vict c 52
3 Recital	7 Explanation of diplomatic representative and consul
4 Explanation of section 14 of 33 & 34 Vict, c 52 as to statement on oath including affirmations	8 Addition to list of crimes in schedule

THE EXTRADITION ACT, 1873

(36 & 37 Vict, C 60)

(5th August 1873)

An act to amend the Extradition Act, 1870

(Preamble)

1 * * * * † This Act shall be construed as one with the Extradition Act, 1870†, (in this Act referred to as the principal Act) and the principal Act and this Act may be cited together as the Extradition Acts, 1870 and 1873, and this Act may be cited alone as the Extradition Act, 1873

Construction of Act and short title
 Explanation of sect 6 of 33 & 34 Vict c 52

2 Whereas by section six of the principal Act it is enacted as follows —

“Where this Act applies in the case of any foreign state, every fugitive “criminal of that state who is in or suspected of being in any part of Her Majesty’s dominions, or that part which is specified in the order applying this Act (as the case may be), shall be liable to be

* Repealed (U K) by 56 & 57 Vict, c 51 (S L R)

† Inserting words Rep (U K) by 56 & 57 Vict c 51 (S L R)

‡ 33 & 34 Vict, c 52

apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and 'whether there is or is not any concurrent jurisdiction in any Court of Her Majesty's dominions over that crime'

And whereas doubts have arisen as to the application of the said section to crimes committed before the passing of the principal Act and it is expedient to remove such doubts, it is therefore hereby declared that—

a crime committed before the date of the order includes in the said section—

a crime committed before the passing of the principal Act and the principal Act and this Act shall be construed accordingly

3. [*Recital—Rep (U. K.) by 56 and 57 Vict., c 54 (S. L. R.)*]

Every person who is accused or convicted of having counselled, procured, commanded aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed for the purposes of the principal Act and this Act to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly

4 * * * * The provisions of the principal Act relating to depositions and statements on oath taken in a foreign state and copies of such original depositions and statements do and shall extend to affirmations taken in a foreign state, and copies of such affirmations

Explanation of sect 14 of 33 & 34 Vict., c 52 as to statement on oath including affirmations

5. A Secretary of State may, by order under his hand and seal, require a Police Magistrate or a Justice of the Peace to take evidence for the purposes of any criminal matter pending in any Court or Tribunal in any foreign state, and

Power of taking evidence in United Kingdom for foreign criminal matters

the Police Magistrate or Justice of the Peace, upon the receipt of such order, shall take the evidence of every witness, appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offence and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall transmit the same to the Secretary of State, such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section to attend and give evidence and answer questions and produce documents in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence

Every person who wilfully gives false evidence before a Police

* The words 'It is declared that' were repealed (U. K.) by 56 & 57 Vict., c (S. L. R.)

Magistrate or Justice of the Peace under this section shall be guilty of perjury

Provided that nothing in this section shall apply in the case of any criminal matter of a political character

6 The jurisdiction conferred by section sixteen of the principal Act on a stipendiary Magistrate, and a sheriff or sheriff's substitute, shall be deemed to be in addition to, and not in derogation or exclusion of, the jurisdiction of the Police Magistrate

7 For the purposes of the principal Act and this Act a diplomatic representative of a foreign state shall be deemed to include any person recognised by the Secretary of State as a consul general of that state, and a consul or vice-consul shall be deemed to include any person recognized by the Governor of British possession as a consular officer of a foreign state

8 The principal Act shall be construed as if there were included in the first schedule to that Act the list of crimes contained in the schedule to this Act

SCHEDULE

LIST OF CRIMES

	done in England or by
	subs
	ng or t tuted
	ng or t y Act o the
principal Act	
Any indictable offence under the laws for the time being in force in relation to bankruptcy which is not included in the first schedule to the principal Act	

THE EXTRADITION ACT, 1895

(58 & 59 Vict. C 33)

[6th July, 1895]

An Act to amend the Extradition Acts 1870 and 1873, so far as respects the Magistrate by whom and the place in which the case may be heard and the criminal held in custody

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows —

1 (1) When a fugitive criminal has been apprehended in pursuance of a warrant under section 8 of the Extradition Act 1870,* and a Secretary of State on representation made by or on behalf of the criminal is of opinion that his removal for the purpose of his case being heard at Bow Street will be dangerous to his life and prejudicial to his health, the Secretary of State if it appears to him consistent with the Order in Council under the Extradition Act, 1870 applicable to the case, may, in his discretion by order stating the reasons for such opinion direct the case to be heard before such Magistrate as is named in the order, and at the place in the United Kingdom at which the criminal was apprehended, or for the time being is

(2) The Magistrate may be if the place is in England a Metropolitan Police Magistrate or a Stipendiary Magistrate, and if it is in Scotland a sheriff or sheriff-substitute and if it is in Ireland, any Stipendiary Magistrate, and the Magistrate hearing the case in pursuance of the order shall for that purpose be deemed to be a Police Magistrate within the meaning of the Extradition Act, 1870, and also shall have the same jurisdiction, duties and powers, as near as may be, and may commit to the same prison as if he were a Magistrate for the county, borough or place in which the hearing takes place

(3) Provided that, when the fugitive criminal is committed to prison to await his surrender, the committing Magistrate, if of opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison may order him to be held in custody at the place in which he for the time being is, or any other place named in the order to which the Magistrate thinks, he can be removed without danger to his life or prejudice to his health, and while so held he shall be deemed to be in legal custody and the Extradition Acts 1870* and 1873† shall apply to him as if he were in the prison to which he is committed, and the forms of warrant used under the said Acts may be varied accordingly

(4) This Act may be cited as the Extradition Act, 1895, and shall be construed together with the Extradition Acts, 1870 and 1873 and those Acts and this Act may be cited collectively as the Extradition Acts 1870 to 1895

THE EXTRADITION ACT, 1906

(6 Edw 7 C 15)

[4th August 1906]

An Act to include Bribery amongst Extradition Crimes

Whereas a convention has been concluded between His Majesty and the President of the United States for including in the list of crimes on account of which extradition may be granted to certain offences, and amongst others bribery

* Stat 33 & 34 Vict, c 52

† 36 & 37 Vict c,

And WHEREAS it is provided by the said convention that it shall come into force within ten days after publication in conformity with the laws of the high contracting parties .

And WHEREAS bribery is not at present included in the list of crimes in the First Schedule to the Extradition Act, 1870,* and the said convention cannot be published in conformity with the laws of the United Kingdom until bribery is so included

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and commons, in this present Parliament assembled, and by the authority of the same as follows —

1 The Extradition Act, 1870, shall be construed as if bribery were included in the list of crimes in the First Schedule to that Act

Addition of bribery to the test of extradition crimes

2 This Act may be cited as the Extradition Act, 1906, the Short title Extradition Acts 1870 to 1895, and this Act may be cited together as the Extradition Acts, 1870 to 1906

THE EXTRADITION ACT, 1932.

(22 & 23 Geo 5 C 39)

An Act to include offences in relation to dangerous drugs, and attempts to commit such offences, among extradition crimes

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows —

1 The Extradition Act, 1870, shall be construed as if offences against any enactment for the time being in force relating to dangerous drugs, and attempts to commit such offences, were included in the list of crimes in the First Schedule to that Act

Amendment of 33 & 34 Vict, c 52 Schedule I

2 This Act may be cited as the Extradition Act, 1932, and the Short title and citation Extradition Acts, 1870 to 1906, and this Act may be cited together as the Extradition Acts, 1870 to 1932

THE INDIAN EXTRADITION ACT (XV OF 1903)

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* 33 & 34 Vict, c 52

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THE INDIAN EXTRADITION ACT, 1903.

ACT NO. XV OF 1903 *

[Received the Governor-General's Assent on the 4th November, 1903]

An Act to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

WHEREAS it is expedient to provide for the more convenient administration in British India of the Extradition Acts, 1870 and 1873 and of the Fugitive Offenders Act, 1881 ;

And whereas it is also expedient to amend the law relating to the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873, do not apply ,

It is hereby enacted as follows —

Notes —Extradition Act and Criminal Procedure Code must be strictly construed in favour of accused persons where and when reasonably justified A I R 1919 Bom 81=53 B 149=31 Bom L R 62=30 Cr L J 772=117 Ind Cas 321 The policy of extradition law is to secure offender's guilty of only grave crimes and not purely local crimes or slight offences 12 Mys L J 329=39 Mys H C R 485 (F B)

CHAPTER I

PRELIMINARY.

Short title, extent and commencement

† [1. (1) This Act may be called the Indian Extradition Act, 1903.

(2) It extends to the whole of British India (including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti), and

(3) It shall come into force on such day as the [Central Government]† by notification in the [official Gazette],§ may direct ||]

Application —This Act does not apply to a case of extradition from Berar to the Hyderabad States which is governed solely by the treaty between the State and the Government of India. 77 Ind. Cas. 234=A I R 1924 Nag 313

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "European British subject" means a European British subject

* For Statement of Objects and Reasons see Gazette of India, 1901 Pt V p 21, for Report of Select Committee see *ibid* 1903, Pt V, p 469, for proceedings in Council see *ibid*, Pt VI, pp 151, 163 and 177

† In Burma for section 1 substitute the following —"1 This Act may be called the Burma Extradition Act"

... G I Order

... I Order

... Gazette of

The Act has been declared in force in the Angul District by s 3 of this Angul Laws Regulation, 1913 (III of 1913)

as defined by the Code of Criminal Procedure for the time being in force

(b) "extradition offence" means any such offence as is described in the first schedule

(c) 'Foreign State' means a State to which, for the time being, the Extradition Acts, 1870* and 1873† apply

(d) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force

(e) "offence" includes any act wheresoever committed which would if committed in [British India],‡ constitute an offence and

(f) 'rules' include prescribed forms §

Clause (a) —A woman born of European parents and marrying the subject of a Native State in India does not cease to be a European British subject either by reason of her marriage or because of her domicile in the Native State 53 B 149—31 Bom L R 62 117 Ind Cas 321 A I R 1929 Bom 81—30 Cr L J 772

I R 1921 Cal 273

CHAPTER II

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES

3 (1) Where a requisition is made to the [Central Government]** by the Government of any Foreign State for the surrender of a fugitive

Requisition for surrender

criminal of that State

India] † the [Central

order to any Magist

into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case

(2) The Magistrate so directed shall issue a summons or warrant

Summons or warrant for arrest

for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would

ordinarily issue

(3) When such criminal appears or is brought before the Magistrate the Magistrate shall inquire into the

Inquiry by Magistrate

case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were

* 33 & 34 Vict, c 52

† 36 & 37 Vict c 60

‡ In Burma for the words British India read the words British Burma vide G B Order of 1937

one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the [Central Government]*

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail

(6) The Magistrate shall report the result of his inquiry to the [Central Government]* and shall forward, together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the [Government]†

(7) If the [Central Government],* is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to [such High Court as may be named in the order]‡ and the fugitive criminal shall not be surrendered until such question has been decided

(8) If, upon receipt of such report and statement or upon the decision of any such question, the [Central Government]* is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of [British India]§ may be re-taken upon an escape

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4), within two months after such committal, the High Court may, after such committal, the High Court may,

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor', vide G B Order of 1937.

† In Burma for the word within brackets read the word 'Governor', vide G B Order of 1937.

‡ In Burma for these words within brackets read the words "the High Court", vide G B Order of 1937.

§ In Burma for the words "British India" read "British Burma", vide G B Order of 1937.

upon application made to it on behalf of such fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the [Central Government]* order such criminal to be discharged, unless sufficient cause is shown to the contrary

Foreign State—The East Indian possessions of France are not a Foreign State and Chapter II of the Indian Extradition Act of 1903 does not apply to those possessions 59 M 1023-59 M L J 278 A I R 1930 Mad 981=129 Ind Cas 626

Notes—As regards allowing bail to a prisoner, against whom proceedings are pending under this Act the High Court has the fullest discretion 15 C W N 736 This section gives the Government authority to empower any Magistrate to enquire into a case 39 C 164-15 C W N 1056 Where the warrant of arrest under which an accused was arrested in extradition proceedings referred to the offence of escaping from lawful custody but the warrant was issued on a petition charging him with theft which is an extradition offence Held that the extradition proceedings were taken in respect of an extradition offence 45 C 31=39 C L J 913

Clause (1)—Vide 37 P R 181 Cr

Clause (3)—Vide 38 C 547 15 C W N 736

Clause (5)—15 C W N 736-12 Cr L J 322

Clause (7)—Vide 46 C 52 50 Ind Cas 618

Clause (10)—Where High Court has no jurisdiction of superintendence it has no authority to grant bail 46 C 31

4 (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the

Power to Magistrate to issue warrant of arrest in certain cases

[Central Government]* in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign

State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction

Issue of warrant to be reported forthwith

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the [Central Government]*

(3) A person arrested on a warrant issued under this section shall

Person arrested not to be detained unless order received

not be detained more than two months unless within that period the Magistrate receives an order made with reference to

such person under section 3 sub section (1)

(4) In the case of a person arrested or detained under this section

Bail

the provisions of the Code of Criminal Procedure for the time being in force

relating to bail shall apply in the same manner as if such person were accused of committing in [British India]† the crime of which he is accused or has been convicted

Notes—The Magistrate who is authorized to hold an enquiry under this Act is not subject to the appellate jurisdiction of the High Court 38 C 547-15 C W N 736, but see 14 Cr L J 678=41 Cal 400

* In British India the words within brackets have been substituted by G I Order 1937 In Burma for these words read the word 'Governor' Vide G B Order of 1937.

† In Burma for the words 'British India' read 'British Burma' Vide G B Order of 1937

5 (1) If the [Central Government]* is of opinion that the crime of which any fugitive criminal of a foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (1).

Power of Government to refuse to issue order under section 3 when crime of political character

(2) The [Central Government]* may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued

Power of Government to discharge any person in custody at any time

to be discharged

6 The expressions 'the Police Magistrate' and 'the Secretary of State' in section 3 of the Extradition Act, 1870,† shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the [Central Government]*

References to Police Magistrate and 'Secretary of State' in section 3 of Extradition Act 1870

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES

7 (1) Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a Foreign State, and such person escapes into or is in [British India],‡ and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be, [or if such person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town]§ for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly

Issue of warrant by Political Agents in certain cases

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested shall [be produced before the District Magistrate (or Chief Presidency Magistrate, as the case may be),|| who shall record any statement made by him, such accused person shall then],§ unless released in accordance with the provisions of this Act, be forwarded to the

Execution of such warrant

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor' vide G. B. Order of 1937.

† 33 & 34 Vict. c. 52

‡ In Burma for the words 'British India' read 'British Burma' vide G. B. Order of 1937.

§ These words within brackets were substituted by section 2 of the Indian Extradition Act, 1937.

place and delivered to the person or authority indicated in the warrant

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons absconding shall with any necessary modifications, apply where any warrant has been received by a District Magistrate [or Chief Presidency Magistrate]* under this section as if the warrant had been issued by himself

62 but see A I R 1934 All 148 In case of treaty with Nepal, neither Government is bound to surrender A I R 1933 Pat 295 34 Cr L J 932=12 Pat 347

8 (1) Where a Political Agent has directed by endorsement on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody

(2) When security is taken under this section, the Magistrate shall certify the fact to the Political Agent who issued the warrant, and shall retain the bond

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorized by the Political Agent to take him into custody

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to

* These words within brackets were substituted by section 2 of the Indian F (Amendment) Act 1913 (I of 1913) But these words have been omitted in B Q D Order of 1937

taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties

***8A** Notwithstanding anything contained in section 7, sub-section (2), or in section 8, when an accused person arrested in accordance with the provisions of section 7 is produced before the District Magistrate [or Chief Presidency Magistrate as the case may be]† and the statement (if any) of such accused person has been recorded, such Magistrate may, if he thinks fit, before proceeding further report the case to the [Central Government]† and, pending the receipt of orders on such report may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required

Notes—14 P L T 537=31 Cr L J 932 It is discretionary with the Magistrate under this section to report the matter to the Local Government 15 P L T 493=A I R 1934 Pat 553

9 Where a requisition is made to the [Central Government]† or on behalf of any State not being a Foreign State for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall (except in so far as relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section

Provided that if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent

Notes—The procedure for requisitioning the surrender of any person accused of having committed a crime not necessarily an extradition crime is laid down in this section but the registration in such a case has to be made to the Government of India or to any Local Government 66 Ind Cas 517-1 Pat 57

10 (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the [Central Government]† in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7 the Magistrate may if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion

* 8A was inserted by section 3 of the Indian Extradition (Amendment) Act 1913 (I of 1913)

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937
; In Burma the words within brackets have been omitted by G B Order of 1937

justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction

(2) The Magistrate shall forthwith report the issue of a warrant under this section if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent to such Political Agent and in other cases to the [Central Government]*

(3) A person arrested on a warrant issued under this section shall not, without the special sanction of the [Central Government]* be detained more than two months unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9 or a warrant for the arrest of such person under section 7

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in [British India]† the offence with which he is charged

Notes—Under this section jurisdiction is distinctly conferred on the Magistrates in case evidence on the information as 8 Bom L R 507 Where a detained by the Magistrate under clause (4) 26 Bom L R 284

Under sub section (3) persons who are proceeded against under this section cannot be detained in prison for more than two months without the sanction of the Central Government A I R 1935 Pat 419=16 Pat L T 551=36 Cr L J 1500 A Magistrate has no power to issue a warrant under this section when neither a warrant nor a requisition has been received When that procedure is not followed the arrest is illegal 620 399=155 Ind Cas 537=36 Cr L J 791=89 C W N 285—A I R 1935 Cal 102

11 (1) A person accused of an offence committed in [British India],‡ not being the offence for which his surrender is asked, or undergoing sentence under any conviction in [British India]† shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be re-surrendered to the [Central Government]* on the termination of his trial for the offence for which his surrender has been asked

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed

(2) On the surrender of a person undergoing sentence under a conviction in [British India]† his sentence shall be deemed to be suspended until the date of his re-surrender when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender

Notes—14 P R 1873 Cr

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† In British Burma for the words 'British India' read the words 'British Burma' vide G B Order of 1937

12 The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State not being a Foreign State, has escaped into or is in [British India]* before his sentence has expired

Application of Chapter to convicted persons

to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly

13 Every person who is accused or convicted of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly

Abetment and attempt

14 It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of [British India]* may be re-taken upon an escape

Lawfulness of custody and re-taken under warrant issued under Chapter

15 The [Central Government]† may, by order, stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged

Power of Government to stay proceedings and discharge person in custody

Notes—By this section High Court is not ousted of its jurisdiction to interfere in a case where the arrest is illegal and has not been made under a valid warrant 66 Ind Cas 517, 39 G 273, 7 Bom L R 463 41 C 400

16 The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of [British India]* has concurrent jurisdiction

Application of Chapter to offences committed before its commencement

17 (1) In any proceedings under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence

Receipt in evidence of exhibits depositions and other documents

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside [British India],* or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated,—

Authentication of the same

* In Burma for the words 'British India' read the words 'British Burma', vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937. But in British Burma for these words read the word 'Governor', vide G B Order of 1937.

(a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the State where the same was issued or acting in or for such State

(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require

(c) if the certificate of or judicial document stating the fact of, a conviction purports to be certified by a Judge Magistrate or officer of the State where the conviction took place or acting in or for such State

(d) if the warrants depositions statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued taken or given

(3) For the purposes of the section "warrant" includes any judicial document authorizing the arrest of any person accused or convicted of an offence

Definition of warrant

18 Nothing in this Chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies and the provisions of this Act shall be modified accordingly

Chapter not to derogate from treaties

Note
par
ope
Cr

French Government in India is governed by Act 9 of the Treaty of 1815 and is not governed by Extradition Treaty of 1876 On demand from the French Governor any accused person can be handed over by a Magistrate without any enquiry A I R 1930 Mad 981=1930 M W N 881 59 M L J 278=53 M 1023 Where Government exercises power under the Act Court cannot interfere A I R 1933 Pat 295=14 P L T 537

CHAPTER IV *

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS

19 For the purpose of applying and carrying into effect in [British India]† the provisions of the Fugitive Offenders Act 1881‡ the following provisions are hereby made —

§[(a) the powers conferred on 'Governors' of British possessions (shall be powers of the Central Government)]||

that this Chapter shall be
monies and on the high seas
Vict c 69)
tish Burma' and for the

§ In Burma clause (a) has been omitted by G B Order of 1937

|| In British India the words within brackets have been substituted by G B Order of 1937

(b) the powers conferred on a "Superior Court" may be exercised by any Judge of [a High Court] *

(c) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the [Central Government]† in that behalf and

(d) the offences committed in [British India]‡ to which the Act applies are piracy, treason, and any offence punishable under the Indian Penal Code§ with rigorous imprisonment for a term of twelve months or more or with any greater punishment

Clause (c) — *Vide* 8 Ind. Cas. 301 = 11 Cr. L. J. 622

CHAPTER V

OFFENCES COMMITTED AT SEA

20 Where the Government of any State outside [India]† makes a requisition for the surrender of a person accused of an offence committed on board any vessel on the high seas which comes into any port of [British India]‡ the [Central Government]† and any Magistrate having jurisdiction in such port and authorised by the [Central Government]† in this behalf may exercise the powers conferred by this Act

CHAPTER VI

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS

[OUTSIDE BRITISH INDIA] ||

21 The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place [outside British India]|| in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any State outside India other than a British Court and the offence is of a political character

* In Burma for the words "a High Court" read "the High Court", *vide* G. B. Order of 1937

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for the words within brackets read the word "Governor", *vide* G. B. Order of 1937

‡ In British Burma for the words "British India" read "British Burma" and for the word "India" read "Burma", *vide* G. B. Order of 1937

§ N.I. of 1860

|| In Burma for the words within brackets read "outside Burma and India", *vide* G. B. Order of 1937

SUPPLEMENTAL

Power to make rules

22 (1) The [Central Government]* may make rules† to carry out the purposes

of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as are entitled to receive them.

(b) the seizure and the disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies

(c) the pursuit and arrest in [British India] † by officers of the Government or other persons authorised in this behalf of persons accused of offences committed elsewhere, and

(d) the procedure and practice to be observed in extradition proceedings

(3) Rules made under this section shall be published in the [official Gazette]§ and shall thereupon have effect as enacted by this Act

Notes—8 Ind Cas 301 Rules made under the Act must be treated as sections of the Act A I R 1931 Oudh 394=32 Cr L J 1243=8 O W N 933 Where an offence has been registered in Khasipur State and State Police officer lodges information of offence at a Sind Police-station Sind Police officers cannot enter a house and search either person or property without the intervention of a Magistrate 30 S L R 210—37 Cr L J 1068 =A I R 1936 Sind 153

23 Notwithstanding anything in the Code of Criminal Procedure, 1898 any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause *seventhly*, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10

Notes—Magistrate can grant bail to a person arrested under section 51 (7), Cr P
e State A I R 1975 Bom 101=
0, *contra* 25 Cr L J 846=A I
ers only to cases of persons arrested
persons arrested not only without a
62 C 399=155 Ind Cas 537=36

* The words within brackets have been substituted in British India by G I Order of 1937. But in British Burma for these words read the word 'Governor', vide G B Order of 1937.

† For rules see Gazette of India 1904 Pt I p 361, also Gen S R and O, see also Notification No 362 I of Government of India (Foreign and Political Department), dated 20th July, 1925

† In Burma for the words British India read 'British Burma', vide G. B. Order of 1937.

§ The words within brackets have been substituted by G. I. Order of 1937 in India. But in Burma read the word Gazette, vide G. B. Order of 1937.

24. [Repeals] *Rep by the Repealing and Amending Act, 1914 (X of 1914).*

THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

[See section 2, clause (b), and Chapter III (Surrender of Fugitive Criminals in case of States other than Foreign States)]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 221).

Offences relating to coin and stamps (sections 230 to 263A)

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307)

Thagi (sections 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333)

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Kidnapping and slavery (sections 360 to 373) ---

Lurking house trespass [sections 443, * (444)].

Forgery, using forged documents, etc., (sections 463 to 477A)

'Desertion from any unit of' "Indian States Forces"† declared by the Governor
a unit desertion from

to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm

Revolt or conspiracy to revolt by two or more persons on board a ship on the high sea against the authority of the master

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THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Rep by Repealing and Amending Act, 1914 (X of 1914)

'410" by section 2 and Schedule I of

THE FACTORIES ACT (XXV OF 1934.)

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THE SCHEDULE

THE FACTORIES ACT.

ACT NO XXV OF 1934

Received the assent of the Governor-General on the 20th August, 1934

An Act to consolidate and amend the law regulating labour in factories

WHEREAS it is expedient to consolidate and amend the law regulating labour in factories, It is hereby enacted as follows —

Notes — The Royal Commission of labour in India made a number of recommendations for the amendment of the Factories Act. These were published with their report in July 1931. After examining the present Factories Act, the Commission recommended that certain amendments were received from the Government of India have framed them. They should be properly enforced for the protection of workmen. But if that employer is proceeded against in a Criminal Court for alleged negligence, the matter should be clearly brought home to them. 26 Bom L R 1245-85 Ind Cas 226=26 Cr L J 482

Object of the Act — The object of the Act is to protect human beings from being subjected to unduly long hours of bodily strain of manual labour. It also provides that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for prevention of accidents. In order to obtain the information necessary to ensure its objects are carried out, the Act provides for returns and registers to be kept by the occupier of the factory.

of the Act
applicable and
of a factory
is unincorporated

CHAPTER I

PRELIMINARY

Short title extent and commencement

1 (1) This Act may be called the Factories Act 1934

[(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas]*

(3) It shall come into force on the 1st day of January 1935

Definitions

2 In this Act unless there is anything repugnant in the subject or context —

(a) 'adolescent' means a person who has completed his fifteenth but has not completed his seventeenth year

(b) 'adult' means a person who has completed his seventeenth year,

(c) 'child' means a person who has not completed his fifteenth year

(d) 'day' means a period of twenty four hours beginning at midnight

(e) 'week' means a period of seven days beginning at midnight on Saturday night

(f) 'power' means electrical energy and any other form of energy which is mechanically transmitted and is not generated by

' means any process—

repairing ornamenting finishing or packing, or otherwise treating any article or substance with a view to its use, sale transport delivery or disposal or

(ii) for pumping oil water or sewage, or

(iii) for generating transforming or transmitting power,

(h) 'worker' means a person employed whether for wages or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with subject to the manufacturing process but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on,

(j) 'factory' means any premises including the precincts thereof whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on

but does not include a mine subject to the operation of the Indian Mines Act 1923 †

(k) 'machinery' includes all plant whereby power is generated, transformed transmitted or applied

* In Burma sub section (2) has been omitted by G. O. Order of 193

† IV of 193

section (2) for the notification of class of premises where necessary and sub section (3) is designed to ensure that a notification of the Local Government does not remain in force after the condition justifying its issue have ceased to apply' —*Notes on Clauses*

6 The [Provincial Government]* may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act

Power to declare departments to be separate factories

Notes — Section 6 reproduces substance in section 53 but it is proposed that notifications should be limited to specified factories as there is no notification applicable to classes of factories —*Notes on Clauses*

7 Where the [Provincial Government]* is satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty and is not likely to be twenty or more on any day during the ensuing twelve months, it may, by order in writing, exempt such factory from the operation of this Act

Power to exempt on a change in the factory

Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory

Notes — This is a new clause designed to enable the Local Government to exempt from the Act premises which by reason of a change in their use should no longer be treated as factories —*Notes on Clauses*

8 In any case of public emergency the [Central Government]* may, by notification in the [official Gazette]† exempt any factory from any or all of the provisions of this Act for such period as he may think fit

Power to exempt during public emergency

Notes — Section 57 confers on the Central Government the powers which may be exercised by Provincial Governments under the Act, while section 56 enables the Provincial Government to do so. 57 has been added only for proposed to

9 (1) Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season, the occupier shall send to the Inspector a written notice containing—

Notice to Inspector before commencement of work

- the name of the factory and its situation
- the address to which communications relating to the factory should be sent,
- the nature of the manufacturing processes to be carried on in the factory,
- the nature and amount of the power to be used, and
- the name of the person who shall be the manager of the factory for the purposes of this Act

* In British India the words within brackets have been substituted by G.O. Order of 1937. In Burma for these words read the word Governor, vide G.O. Order of 1937.

† In British India the words within bracket have been substituted by G.O. Order of 1937. In Burma for these words read the word Gazette, vide G.O. Order of 1937.

(2) Whenever another person is appointed as manager, the occupier shall send to the Inspector a written notice of the change, within seven days from the date on which the new manager assumes charge

(3) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager, or if, no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act

CHAPTER II

THE INSPECTING STAFF

10 (1) The [Provincial Government]* may, by notification in the *Inspectors* [official Gazette]† appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively

(2) The [Provincial Government]* may, by notification as aforesaid, appoint any person to be a Chief Inspector, who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the province

(3) No person shall be appointed to be an Inspector under sub-section (1) or a Chief Inspector under sub-section (1) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith

(4) Every District Magistrate shall be an Inspector for his district

(5) The [Provincial Government]* may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purpose of this Act, within such local limits as it may assign to them respectively

(6) In any area where there are more Inspectors than one, the [Provincial Government]* may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise, and the Inspector to whom the prescribed notices are to be sent

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code‡ and shall be officially subordinate to such authority as the [Provincial Government]* may specify in this behalf

Notes — * A person who is the occupier or is employed in or about a factory or workshop or is directly or indirectly interested therein or in any process or business carried on therein or in a patent connected therewith does not act as Inspector *Malsbury's Law of England 1st Ed., Vol IV p 529*

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor' vide G. B. Order of 1937.

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Gazette', vide G. B. Order of 1937.

‡ A.L.Y. of 1860

11 Subject to any rules made by the [Provincial Government]^a
 Powers of Inspector in this behalf, an Inspector may, within the
 local limits for which he is appointed,—

(a) enter, with such assistants (if any), being persons [in the service of the Crown][†] or of any municipal or other public authority, as he thinks fit, any place which is or which he has reason to believe to be, used as a factory or capable of being declared to be a factory under the provisions of section 5,

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act, and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself

Notes—The Inspector may examine the documents either within the factory or not
Squire v Swaney 34 L T 26

12 The [Provincial Government]^{*} may appoint such registered
 Certifying surgeons medical practitioners as it thinks fit to be
 certifying surgeons for the purposes of this
 Act within such local limits as it may assign to them respectively

(2) A certifying surgeon may authorise any registered medical practitioner to exercise any of his powers under this Act:

Provided that a certificate of fitness for employment granted by such authorised practitioner shall be valid for a period of three months only, unless it is confirmed by the certifying surgeon himself after examination of the persons concerned.

Explanation—In this section a "registered medical practitioner" means any person registered under the Medical Act, 1853,[†] or any subsequent enactment amending it, or [under any][§] Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, [and includes, in any area where no such register is maintained, any person declared by the 'Provincial Government,'^{||} by notification in the "official Gazette,"^{||} to be a registered medical practitioner for the purpose of this section][¶]

* T. D. 1. 1. 7. 2. 21

1937

†

1937

Order of
1937
Order of
amendment

insert "the Burma Medical Act or

been substituted by G. I. Order of

1931

1937

In Burma the words within brackets have been omitted by G. I. Order of

CHAPTER III

HEALTH AND SAFETY

13 Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and shall be cleansed at such times and by such methods as may be prescribed, and these methods may include lime washing or colour-washing, painting varnishing, disinfecting and deodorising.

14 (1) Every factory shall be ventilated in accordance with such standard and by such methods as may be prescribed

(2) Where gas, dust or other impurity is generated in the course of work adequate measures shall be taken to prevent injury to the health of workers

(3) If it appears to the Inspector that in any factory gas dust or other impurity generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The [Provincial Government]* may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities which may be injurious to workers and specifying the nature of such devices

Notes—Sub clauses (1) and (2) are based on section 9 (c) and section 37 (2) (g) while sub clause (3) is based on section 10. Sub clause (4) is designed to enable Local Governments to do by rules for classes of factories what Inspectors under sub clause (3) can do by orders for single factories.—*Notes on Clauses*

Artificial humidification

15 (1) The [Provincial Government]* may make rules—

(a) factories

(b) humidity of the air , and the

(c) directing prescribed tests for determining the humidity and cooling properties of the air to be carried out and recorded;

(2) In any factory in which the water supply is increased the water used for supply or other source of drink before it is so used

(3) If it appears to the Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified, he may serve on the manager of the factory an order in writing specifying the measures

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor', and G B Order of 1937.

19 (1) In every factory a sufficient supply of water fit for drinking shall be provided for the workers at suitable places
 Water

(2) The supply required by sub-section (1) shall comply with such standards as may be prescribed

(3) In every factory in which any process involving contact by the workers with injurious or obnoxious substances is carried on, a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed

Notes — 'Sub clause (1) combines sections 14 and 37 (2) (ii). Sub clause (2) is new and is based on a recommendation of the Labour Commission' — *Notes on Clauses*

20 For every factory sufficient latrines and urinals, according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours
 Latrines and urinals

Notes — This combines sections 13 and 37 (2) (i). The proviso to the former has been omitted in accordance with a recommendation of the Labour Commission' — *Notes on Clauses*

21 In every factory the doors of each room in which more than twenty persons are employed shall, except in the case of sliding doors, be constructed so as to open outwards, or, where the door is between two rooms, in the direction of the nearest exit from the building, and no such door shall be locked or obstructed while any work is being carried on in the room
 Doors to open outwards

22 In every factory such precautions against fire shall be taken as may be prescribed
 Precautions against fire

23 (1) Every factory shall be provided with such means of escape in case of fire as can reasonably be required in the circumstances of each factory
 Means of escape

(2) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date

(3) The means of escape shall not be obstructed while any work is being carried on in the factory

24 (1) In every factory the following shall be kept adequately fenced, namely .—
 Fencing

(a) every exposed moving part of a prime mover and every fly-wheel directly connected to a prime mover,

(b) every hoist or lift, hoist-well or lift-well, and every trap-door or similar opening near which any person may have to work or pass.
 and

(c) every part of the machinery which the [Provincial Government]* may prescribe

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date

(3) All fencing required by or under this section or sub-section (1) of section 26 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repairs or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory

Clause (2) — A mere entry of the Inspector's order in his visit book even with knowledge of the manager is not an order issued under this section. It must be shown that the order in writing was brought to the specific notice of the individual affected. The order should state specifically the measures to be taken by the manager and it should be served definitely on him. 26 Bom L R 1215

25 If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date —

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building ways machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof

26 (1) If it appears to the Inspector that any building or part of a building or any part of the ways machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a specified date

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered

Notes — Inspectors have already power under section 18A which is substantially reproduced in section 26D to issue orders requiring action to be taken where the machinery or plant has become dangerous and prohibiting the use of dangerous machinery or plant

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word Governor, (vide G B Order of 1937)

pending repairs in cases of necessity. But an Inspector may have reason to fear that the use of certain machinery or plant involves danger without having sufficient evidence to warrant him in issuing definite orders requiring its alteration or repair.—*Notes on Clauses*

27 (1) No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed and moving parts of any machinery which is in motion under power

(2) The [Provincial Government]* may, by notification in the [official Gazette],† prohibit in any specified factory or class of factories, the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power

Notes—This section is based on section 19 but it is proposed to extend to the oiling of machinery the prohibition which at present applies to cleaning of machinery.—*Notes on Clauses*

28 (1) [The Provincial Government]* may make rules prohibiting the admission to any specified class of factories, or to specified parts thereof, of children who cannot be lawfully employed therein

(2) If it appears to the Inspector that the presence in any factory or part of a factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing directing him to prevent the admission of such children to the factory or any part of it

Notes—In sub clause (1) it is proposed to give the Local Government general powers to exclude non working children with a view to their protection.—*Notes on Clauses*

29 No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work

Prohibition of employment of women and children near cotton openers

Provided that, if the feed end of a cotton-opener is in a room separated from the delivery-end by a partition extending to the roof, or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated

Notes—The object of this section is to prevent the spread of fire in a place where

30 Where in any factory an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory, during the forty-eight hours after the accident occurred, or which is of any nature which may be pres-

Notice of certain accidents

cribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time as may be prescribed

31 (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Chapter, or the occupier of the factory, may, within thirty days of the service of the order, appeal against it to the [Provincial Government]* or to such authority as the [Provincial Government]* may appoint in this behalf, and the [Provincial Government]* or appointed authority may, subject to rules made in this behalf by the [Provincial Government]*, confirm, modify or reverse the order

Appeals

(2) The appellate authority may, and if so required in the petition or appeal shall hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as the [Provincial Government]* may prescribe in this behalf

Provided that if no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor

(3) In the case of an appeal against an order under section 16 the appellate authority shall and in any other case except in appeal against an order under sub-section (2) of section 26 or sub-section (2) of section 28 the appellate authority may, suspend the order appealed against pending the decision of the appeal subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case

Notes—This is section 50—*Notes on Clauses*

Power of [Provincial Government]* to make rules to supplement this Chapter

32 The [Provincial Government]* may make rules—

(a) providing for any matter which according to any of the provisions of this Chapter, is or may be prescribed

(b) requiring the managers of factories to maintain stores of first aid appliances and provide for their proper custody,

(c) providing against danger arising from the use of mechanical transport in factories other than railways subject to the Indian Railways Act, 1890†

(d) prescribing the manner of the service of orders under this Chapter on managers of factories

(e) regulating the procedure to be followed in presenting and hearing appeals under section 31 and the appointment and remuneration of assessors,

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor vide G. B. Order of 1937.

† IX of 1890

(f) regulating the exercise by Inspectors of their powers under this Chapter and

(g) providing for any other matters which may be expedient in order to give effect to the provisions of this Chapter

33 (1) The [Provincial Government]* may make rules requiring

Additional power to make health and safety rules relating to—

Shelters during rest

rules may prescribe the standards of such shelters

Rooms for children —

(2) The [Provincial Government]* may also make rules—

(a) requiring that in any specified factory wherein more than fifty women workers are ordinarily employed a suitable room shall be reserved for the use of children under the age of six years belonging to such women and

(b) prescribing the standards for such rooms and the nature of the supervision to be exercised over the children therein

(3) The [Provincial Government]* may also make rules for any class of factories and for the whole or any part of [the province],† requiring that work on a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act, until a certificate of stability in the prescribed form signed by a person possessing the prescribed qualifications has been sent to the Inspector

Certificates of stability —

(4) Where the [Provincial Government]* is satisfied that any operation in a factory exposes any persons employed upon it to a serious risk of bodily injury, poisoning or disease he may make rules applicable to any factory or class of factories in which the operation is carried on—

Hazardous operations

(a) specifying the operation and declaring it to be hazardous

(b) prohibiting or restricting the employment of women adolescents or children upon the operation,

(c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and

(d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

Notes — The Labour Commission recommended that Local Governments should be

aguard against dangers arising from the use of factory purposes of unsuitable buildings It is

* In British India the words with in brackets have been substituted by C. I. Order of 1937 In Burma for these words read the word Governor Vide G. B. Order of 1937

† In Burma for the words with in brackets read the word British Burma Vide G. B. Order of 1937

limited to new factories and extensions. Sub section (1) is designed to enable the Local Governments to secure the protection of the worker against special hazards arising from the use of particular purposes.—*Notes on Clauses.*

CHAPTER IV.

RESTRICTIONS ON WORKING HOURS OF ADULTS.

34. No adult worker shall be allowed to work in a factory for more than fifty-four hours in any week, or, where the factory is a seasonal one, for more than sixty hours in any week :

Weekly hours.

Provided that an adult worker in a non-seasonal factory engaged in work which for technical reasons must be continuous throughout the day may work for fifty-six hours in any week

Weekly holiday

35. (1) No adult worker shall be allowed to work in a factory on a Sunday unless—

(a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday, and

(b) the manager of the factory has, before that Sunday, or the substituted day, whichever is earlier,—

(i) delivered a notice to the office of the Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory :

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled, whichever is earlier.

(3) Where in accordance with the provisions of sub-section (1), any worker works on a Sunday and has a holiday on one of the three days immediately before it, that Sunday shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Notes—The Act prohibited by this section consists in employing persons on a Sunday (1) without giving them a compensation holiday and (2) without giving notice to the Inspector. A I R 1935 Mad 801=41 L W 497=1935 M. W. N. 326=159 Ind Cas 422

Daily hours.

36. No adult worker shall be allowed to work in a factory for more than ten hours in any day :

Provided that a male adult worker in a seasonal factory may work for eleven hours in any day.

Notes—Where men work 11 hours in any day, they are not entitled to a holiday for

Intervals for rest

37 The periods of work of adult workers in a factory during each day shall be fixed either—

(a) so that no period shall exceed six hours, and so that no workers shall work for more than six hours before he has had an interval for rest of at least one hour, or

(b) so that no period shall exceed five hours and so that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour, or for more than eight and a half hours before he has had at least two such intervals

38 The periods of work of an adult worker in a factory shall be so arranged that, along with his intervals for rest under section 37, they shall not spread over more than thirteen hours in any day, save with the permission of the [Provincial Government]* and subject to such conditions as it may impose, either generally or in the case of any particular factory

Notes—This section is based on a recommendation of the Labour Commission and is designed to prevent the hours of work being so arranged that the worker does not get a reasonably long period away from the factory on each day —*Notes on Clauses*

39 (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 76 a Notice of Periods for Work for Adults showing clearly the periods within which adult workers may be required to work

(2) The periods shown in the Notice required by sub section (1) shall be fixed beforehand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 34, 35, 36, 37 and 38

(3) Where all the adult workers in a factory are required to work within the same periods, the manager of the factory shall fix those periods for such workers generally

(4) Where all the adult workers in a factory are not required to work within the same periods the manager of the factory shall classify them into groups according to the nature of their work

(5) For each group which is not required to work on a system of shifts the manager of the factory shall fix the periods within which the group may be required to work

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shift, the manager of the factory shall fix the periods within which each relay of the group may be required to work

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day

* In British India the words within brackets have been substituted by G. I. Order 1937. But in Burma for these words the word 'Governor' is the G. B. Order of

(8) The [Provincial Government]* may make rules prescribing forms for the Notice of Periods for Work for Adults and the manner in which it shall be maintained

Notes—The object of the section is that the hours of work should be fixed A I R 1934 Bom 43—35 Cr L J 542—58 B 137

40 (1) A copy of the Notice referred to in sub section (1) of section 39 shall be sent in duplicate to the Inspector within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act, before the day on which it begins work

(2) Any proposed change in the system of work in a factory which will necessitate a change in the Notice shall be notified to the Inspector in duplicate before the change is made, and, except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change

41 (1) The manager of every factory shall maintain a Register of Adult Workers showing —

- (a) the name of each adult worker in the factory,
- (b) the nature of his work
- (c) the group if any in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted and
- (e) such other particulars as may be prescribed

Provided that if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section, he may, by order in writing direct that such muster-roll or register shall to the corresponding extent be maintained in place of and be treated as the Register of Adult Workers in that factory

Provided further that where the [Provincial Government]* is satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this Chapter in the case of that factory or factories of that class, as the case may be the [Provincial Government]* may by written order, exempt on such conditions as it imposes, that factory or all factories of that class, as the case may be, from the provisions of this section

(2) The [Provincial Government]* may make rules prescribing the form of the Register of Adults Workers the manner in which it shall be maintained and the period for which it shall be preserved

Notes—In order that the employment register can properly be said to be up to date it is necessary that it should contain a list of the persons employed in the factory their hours of employment register is not the register at the time

up to date
employed in
where the
y at all in
three days

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

pr or to such v s t the matter falls w th n the purv ew of s 41 (1) of Act of 1911 A I R 1934 Cal 546 38 C W N 801 35 Cr L J 1401 61 C 332-151 Ind Cas 763 Th s the Court l although on of the ng to an such an actory of ment oned

42 No adult worker shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Adults displayed under sub section (1) of section 39 and the entries made beforehand against his name in the

Hours of work to correspond with Notice under section 39 and Register under section 41

Register of Adults Workers maintained under section 41

43 (1) The [Provincial Government]* may make rules defining

Power to make rules exempting from restrictions

the persons who hold positions of supervision or management or are employed in a confidential position in a factory and the provisions of this Chapter [other than the provisions of clause (b) of sub section (1) of section 45 and of the provisions to that sub section]† shall not apply to any person so defined

(2) The [Provincial Government]* may make rules for adult workers providing for the exemption to such extent and subject to such conditions as may be prescribed in such rules,—

(a) of workers engaged on urgent repairs—from the provisions of sections 34 35 36 37 and 38

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory—from the provisions of sections 34 36 37 and 38

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 37—from the provisions of sections 34 36 37 and 38

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day—from the provisions of sections 34 35 37 and 38

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day—from the provisions of section 35

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed season—from the provisions of section 35

(g) of workers engaged in a manufacturing process which cannot be carried on except at times dependant on the irregular action of natural forces—from the provisions of section 35 and section 37 and

(h) of workers engaged in engine rooms or boiler houses—from the provisions of section 35

* In Br t s l I d v the words w th n b rackets have been substituted by C I Order of 1937 In l r v for these orders read the ord Governor t de G P Order of 19 7

† The o ds w th n brackets have been substituted by Act VI of 1935

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 39 and 40 which the [Provincial Government]* may deem to be expedient, subject to such conditions as it may impose

(4) In making rules under this section the [Provincial Government]* shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given, other than an exemption under clause (a) of sub-section (2), shall be subject to such limits

(5) Rules made under this section shall remain in force for not more than three years

Notes—A factory which is exempt from the provisions of s. 37 under the rules made under s. 43 (2) (d) cannot be held to be exempt also from the provisions of ss. 39 and 40 of the Act. A. I. R. 1937 Bom. 52—38 Bom. L. R. 1181—38 Cr. L. J. 304

44 (1) Where the [Provincial Government]* is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, it may by written order, relax or modify the provisions of sections 39 and 40 in respect of such workers to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work

(2) The [Provincial Government]* may, by written order exempt, on s. 37, any or all of the adult workers in any factory, or group or class of factories from any or all of the provisions of sections 34, 35, 36, 37, 38, 39 and 40, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (4) of section 3

(4) An order under sub-section (2) shall remain in force for such period as it may specify, but in no case for more than two months from the date on which notice thereof is given to the manager of the factory

Notes—This provides for certain exemptions which cannot suitably be made by rules. Sub-section (1) is designated to meet the case of those factories where the fixing of hours beforehand would impose an unreasonable limitation on the working of the factory for to be done opposed that subject to the effect that the and that

45 (1) The provisions of this Chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions namely —
Further restrictions on the employment of women

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor vide G. B. Order of 1937.
† In Burma the words it or are omitted by G. B. Order of 1937.

(a) no exemption from the provisions of section 36 may be granted in respect of any woman, and

(b) no woman shall be allowed to work in a factory except between 6 A M and 7 P M

Provided that the [Provincial Government]* may, by notification in the [official Gazette] † in respect of any class or classes of factories and for the whole year or any part of it vary the limits laid down in clause (b) to any span of thirteen hours between 5 A M and 7-30 P M

Provided further that, in respect of any seasonal factory or class of seasonal factories in a specified area, the [Provincial Government]* may make rules imposing a further restriction by defining the period or periods of the day within which women may be allowed to work, such that the period or periods so defined shall lie within the span fixed by clause (b) or under the above proviso and shall not be less than ten hours in the aggregate

(2) The [Provincial Government]* may make rules providing for the exemption from the above restrictions to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories where the employment of woman beyond the said hours is necessary to prevent damage to or deterioration in any raw material

(3) Rules made under sub section (2) shall remain in force for not more than three years

Notes—Sub section (1) (b) is based on section 21 but it is proposed to change from 5 30 A M to 6 A M the hour before which women may not normally be employed. The object is to secure for women a night rest of not less than 11 hours which is the period prescribed by International Convention relating to this subject and recommended by the Labour Commission. It provides for exemption by factory is prohibited if a the Inspector of Factories of

46 Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day

Special provision for night shifts

Provided that the [Provincial Government]* may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day

Notes—This is a new provision designed to meet the difficulties of factories working on shifts. For example a factory worker who works until 4 A M on Sunday morning and then gets 40 hours rest commencing work again at 8 1 M on Monday night has at present to be exempted from the provisions relating to weekly holiday.—Notes on Clauses

Extra pay for overtime

47 (1) Where a worker in any factory works for more than sixty hours in any week,

or where a worker in a factory other than a seasonal factory works for more than ten hours in any day,

he shall be entitled in respect of the overtime worked to pay at the rate of one-and-a-half times his ordinary rate of pay

(2) Where a worker in factory other than a seasonal factory works for more hours in any week than are permitted under section 34, he shall be entitled, in respect of the overtime worked excluding any overtime in respect of which he is entitled to extra pay under sub section (1), to pay at the rate of one-and-a-quarter times his ordinary rate of pay

(3) Where any workers are paid on a piece rate basis, the [Provincial Government]* in consultation with the industry concerned may for the purposes of this section fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section

(4) The [Provincial Government]* may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section

Notes —Sub sections (1) and (2) replace section 31 and embody the Labour Commissioner's recommendation that work in excess of 60 hours in the week should be paid at the rate of time and a half —Notes on Clauses

48 No adult workers shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed

Restriction on double employment

49 The [Provincial Government]* may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time save with the permission of the [Provincial Government]* and subject to such conditions as it may impose, either generally or in the case of any particular factory

Notes —This embodies a recommendation of the Labour Commissioner and is designed to give the Local Governments power to control the working of multiplied shifts —Notes on Clauses.

CHAPTER V

SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN

Prohibition of employment of young children

50 No child who has not completed his twelfth year shall be allowed to work in any factory

Notes —Where children are employed for purposes of sorting ground nuts in a place close to a room where machinery for decortication of ground nuts was used the children were employed in a factory A I R 1927 Mad 345=50 M 834=52 M L J. 207 =28 Cr L J 257

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word Governor vide G B Order of 1937

51 No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

Non adult workers to carry tokens giving reference to certificates of fitness

(a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving a reference to such certificate

Notes—The certificate under this section must state in the case of a child who has completed 12 years that he or she is fit for employment in a factory. It cannot be said that in the case of a child of fourteen there is no need for such a certificate. A I R 1929 Bom 272=30 Cr L J 793 117 I O 447

25 (1) A certifying surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work

Certificate of fitness

(2) The certifying surgeon, after examination, may grant to such person, in the prescribed form,—

(a) a certificate of fitness to work in a factory as a child if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work,

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory

(3) A certifying surgeon may revoke any certificate granted under sub section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated there in a factory

(4) Where a certifying surgeon or practitioner authorised under sub section (2) of section 12 refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing

53 (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 52 and who, while at work in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV

Effect of certificate granted to adolescent

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall notwithstanding his age, be deemed to be a child for the purposes of this Act

Extra pay for overtime

47 (1) Where a worker in any factory works for more than sixty hours in any week,

or where a worker in a factory other than a seasonal factory works for more than ten hours in any day,

he shall be entitled in respect of the overtime worked to pay at the rate of one and-a-half times his ordinary rate of pay

(2) Where a worker in factory other than a seasonal factory works for more hours in any week than are permitted under section 34, he shall be entitled, in respect of the overtime worked excluding any overtime in respect of which he is entitled to extra pay under sub section (1) to pay at the rate of one-and-a-quarter times his ordinary rate of pay

(3) Where any workers are paid on a piece rate basis, the [Provincial Government]* in consultation with the industry concerned may for the purposes of this section fix time rates as nearly as possible equivalent to the average rate of earnings of those workers and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section

(4) The [Provincial Government]* may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section

Notes—Sub sections (1) and (2) replace section 31 and embody the Labour Commissioner's recommendation that work in excess of 60 hours in the week should be paid at the rate of time and a half—*Notes on Clauses*

48 No adult workers shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed

Restriction on double employment

49 The [Provincial Government]* may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time save with the permission of the [Provincial Government]* and subject to such conditions as it may impose, either generally or in the case of any particular factory

Notes—This embodies a recommendation of the Labour Commissioner and is designed to give the Local Governments power to control the working of multiplied shifts—*Notes on Clauses*

CHAPTER V

SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN

Prohibition of employment of young children

50 No child who has not completed his twelfth year shall be allowed to work in any factory

Notes—Where children are employed for purposes of sorting ground nuts in a yard close to a room where machinery for decortication of ground nuts was used the children were employed in a factory A I R 1927 Mad 315-50 M 631-52 M L J 207 = 28 Cr L J 257

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

Non adult workers to carry
tokens giving reference to certi-
ficates of fitness

51 No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

(a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving a reference to such certificate

Notes—The certificate under this section must state in the case of a child who has completed 12 years that he or she is fit for employment in a factory. It cannot be said that in the case of a child of fourteen there is no need for such a certificate. A I R 1909 Bom 242=30 Cr L J 793-117 I O 417

25 (1) A certifying surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work

(2) The certifying surgeon after examination may grant to such person, in the prescribed form, a certificate as follows—

(a) a certificate of fitness to work in a factory as a child if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work,

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory

(3) A certifying surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated there in a factory

(4) Where a certifying surgeon or practitioner authorised under sub-section (2) of section 12 refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing

53 (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under clause (b) of sub-section (2) of section 52 and who, while at work in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall notwithstanding his age, be deemed to be a child for the purposes of this Act

17 Adolescents may be certified as fit either for children's work or for adult's work. In the former case they will be subject to all special restrictions imposed by the Act on the work of children and in the latter case they will be subject to none of these restrictions. The Labour Commission also suggested that young persons should be prohibited from working at night but the advantages to be gained by preventing male adolescents who are certified as fully fit for work from working at night do not weigh the difficulties that would thus be created — *Notes on Clauses*

Restrictions on the working hours of a child **54** (1) No child shall be allowed to work in a factory for more than five hours in any day

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day

(3) No child shall be allowed to work in a factory except between 6 A. M. and 7 P. M.

Provided that the [Provincial Government]* may, by notification in the [official Gazette],† in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A. M. and 7-30 P. M.

(4) The provisions of section 35 shall apply also to child workers but no exemption from the provisions of that section may be granted in respect of any child

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory

Notes — Sub sections (1) and (2) are based on recommendations of the Labour Commission. Sub section (3) is based on section 23 (b) and section 51 (2). The same modifications have been made in the case of children as in the case of women. Sub-section (4) is designed to ensure that every child without exception, enjoys a weekly rest. Sub-section (5) is taken from section 25 — *Notes on Clauses*

55 (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 76, a Notice of Periods for Work for Children showing clearly the periods within which children may be required to work

(2) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 39 and shall be such that children working for those periods would not be working in contravention of section 54

(3) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children

(4) The [Provincial Government]* may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained

56 (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing—

Registers of Child Workers

(a) the name of each child worker in the factory,

(b) the nature of his work,

(c) the group, if any, in which he is included,

(d) where his group works on shifts, the relay to which he is allotted,

(e) the number of his certificate of fitness granted under section 52, and

(f) such other particulars as may be prescribed

(2) The [Provincial Government]* may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained, and the period for which it shall be preserved

57 No child shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Children displayed under sub-section (1) of section 55 and the entries made before hand against his name in the Register of Child Workers maintained under sub section (1) of section 56

Hours of work to correspond with Notice and Register
58 Where an Inspector is of opinion —

(a) that any person working in a factory without a certificate of fitness is a child or an adolescent or

(b) that a child or adolescent working in a factory with a certificate is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall

until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be

Power to make rules
59 The [Provincial Government]* may make rules—

(a) prescribing the forms of certificates, of fitness to be granted under section 52, providing for the grant of duplicates in the event of loss of the original certificates and fixing the fees which may be charged for such certificates and such duplicates

(b) prescribing the physical standards to be attained by children and adolescents.

(c) regulating the procedure of certifying surgeons under this Chapter, and specifying other duties which they may be required to perform in connection with the employment of children and adolescents in factories and

(d) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter

CHAPTER VI PENALTIES AND PROCEDURE

Penalty for contraventions of Act and rules
60 If in any factory—

* In British India the words within brackets have been substituted by G I Order 1937 But in Burma for the words within brackets read the word Governor vide B Order of 1937.

(a) there is any contravention—

- (i) of any of the provisions of sections 13 to 29 inclusive, or
- (ii) of any order made under any of the said sections, or
- (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 32, or
- (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 32, or section 33, or
- (v) of any condition imposed under sub-sections (j) or section 31, or

(b) any person is allowed to work in contravention—

- (i) of any of the provisions of sections 34 to 38 inclusive, 42 45 and 48, or
- (ii) of any rule made under any of the said section, or under sections 49, or

(iii) of any condition attached to any exemption granted under section 43 or section 44 or section 45 or to any permission granted under section 38 or section 49, or

(c) there is any contravention of any of the provisions of sections 39 to 41 inclusive or of any rule made under section 39, section 41 or section 47, or of any condition attached to any exemption granted under section 41 or to any modification or relaxation made under section 44, or

(d) any person is not paid any extra pay to which he is entitled under the provisions of section 47, or

(e) any adolescent or child is allowed to work in contravention of any of the provisions of sections 50, 51, 54, 55, 57 and 58, or

(f) there is any contravention of section 55 or section 56 or of any rules made under either of these sections, or under clause (d) of section 59,

the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees.

Provided that if both the manager and the occupier are convicted the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount

Sections 60, 62 to 69 —

sections 41 43 44 and 44A
injured workers out of fines
Workmen's Compensation A

45B 220=58 Ind Cas 152 Where both should not exceed the maximum penalty so A I R 1930 Lah 668 If more than and agent are liable for as many offences 152 see also 53 Ind Cas 933 Separate Ind Cas 153 Joint in law A I R 1931 desirable whenever it unchanced and properly complaint lodged by are responsible for the action are properly and = 149 Ind Cas 450 To The complaint is be established and if the complaint is inst factory owners the fact that the

61 If any person who has been convicted of any offence punishable under clauses (b) to (f) inclusive of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing impose a smaller fine than is required by this section

Notes—This follows a recommendation of the Labour Commission and is designed to secure in suitable cases adequate penalties in the case of repeated offences—*Notes on Clauses*

6 An occupier of a factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 9 shall be punishable with fine which may extend to five hundred rupees

63 Whoever wilfully obstructs an Inspector in the exercise of any power under section 11, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector shall be punishable with fine which may extend to five hundred rupees

Notes—No sort of vicarious responsibility is recognised by the Factories Act in respect of offences referred to in s. 63 of the Act. Where therefore the Inspector asked the manager failed to of the Manager of the Act for t 41 C W N

740

64 A manager of a factory who fails to give notice of an accident as required under section 30 shall be punishable with fine which may extend to five hundred rupees

Notes—A I R 1932 Pat 188 A I R 1930 Lah 668

65 If in respect of any factory any return is not furnished as required under section 77, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees

Provided that if both the manager and the occupier are the aggregate of the fines inflicted shall not exceed this

- 66** Whoever smokes, or uses a naked light or causes or permits any such light to be used in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees

Penalty for smoking or using naked light in vicinity of inflammable material

Exception—This provision does not extend to the use in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process

- 67** Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 52 a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees

Penalty for using false certificate

- 68** If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person

Penalty on guardian for permitting double employment of a child

- 69** A manager of a factory who fails to display the notice required under sub-section (1) of section 76 or by any rule made under this Act or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees

Penalty for failure to display certain notices

- 70** (1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable

Determination of occupier for purposes of this Chapter

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in [British India]* to be the occupier of the factory for the purposes of this Chapter, and such individual shall so long as he is so resident be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association

- (2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable

* In Burma for the words 'British India' read the words 'British Burma' . 120
G B Order of 1937

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder who is resident in either case in [British India]* to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder

Notes—This section is new and is designed to ensure that whenever possible the person responsible as occupier is clearly designated—*Notes on Clauses*

71 (1) Where the occupier or manager of a factory is charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance that other person shall be convicted of the offence and shall be liable to the like fine as if he were the occupier or manager, and the occupier or manager shall be discharged from any liability under this Act

(2) When it is made to appear to the satisfaction of the Inspector at any time prior to the institution of the proceedings—

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager

Notes—This is reproduction of section 42

72 If a child over the age of six years is found inside any part of a factory in which children are working he shall, until the contrary is proved, be deemed to be working in the factory

Notes—Cf section 46 This provision is at present limited to parts of the factory
factory
ctory in
50 M

73 (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the

* In Burma for the words 'British India' read the words 'British Burma', vide G. B. Order of 1937

burden shall be on the accused to prove that such person is not under or over such age

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that worker

Notes — Cf section 47

74 (1) No prosecution under this Act, except a prosecution under section 68, shall be instituted except by or with the previous sanction of the Inspector

Cognizance of offences

(2) No Court inferior to that [of a Presidency Magistrate or]* of a Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder, other than an offence under section 66 or section 67

75 No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 62 or section 64 unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed

Limitation of prosecutions

• Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which the offence is alleged to have been committed

CHAPTER VII

SUPPLEMENTAL

76 (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder, in English and in the vernacular of the majority of the workers, as the [Provincial Government]† may prescribe

Display of factory notices

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition

77 The [Provincial Government]† may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical as may in his opinion be required for the purposes of this Act

Power of [Provincial Government]† to make rules

78 [Repealed by G I Order of 1937 and G B Order of 1937]

79 (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified under [clause (3) of

Publications of rules

* In British Burma the words within brackets have been omitted by G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' vide G B Order of 1937

section 23 of the General Clauses Act, 1897,*]† shall not be less than three months from the date on which the draft of the proposed rules was published.

(2) All such rules shall be published in the [official Gazette]‡ and shall, unless some later date is appointed, come into force on the date of such publication.

Notes—Sub section (1) is based on various provisions throughout the Act Sub section (2) is based on section 39 —*Notes on Clauses*

80. This Act shall apply to factories belonging to the Crown.

81. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act

82 [Rep. by Act XX of 1937.§]

THE SCHEDULE —[Rep. by Act XX of 1937.]||

* X of 1897

† In Burma for the words within brackets read the words "the Burma General Clauses Act", vide G B Order of 1937.

‡ In British India the words within brackets have been substituted by G. I Order of 1937. But in British Burma for these words read the word "Gazette", vide G B Order of 1937.

§ In British India section 82 has been repealed by Act 20 of 1937. But in Burma this section which runs as follows is in force —

Repeal and savings

82 The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act

|| In British India the Schedule has been repealed by Act 20 of 1937 But in Burma this Schedule which runs as follows is in force —

THE SCHEDULE (ENACTMENTS REPEALED)

(See section 82)

Year. 1	No 2	Short title. 3	Extent of repeal 4
1911	XII	The Indian Factories Act 1911.	The whole
1922	II	The Indian Factories (Amendment) Act 1920	The whole
1923	IX	The Indian Factories (Amendment) Act 1922	The whole
1926	XXVI	The Indian Factories (Amendment) Act, 1926	The whole.
1930	VIII	The Repealing and Amending Act, 1930	So much of the First Schedule as relates to the Indian Factories Act, 1911.
1931	XIII	The Indian Factories (Amendment) Act, 1931.	The whole

THE FEMALE INFANTICIDE PREVENTION ACT (VIII OF 1870)

CONTENTS.

PREAMBLE	SECTIONS
SECTIONS	
1 Power to take measure under Act in particular districts	5 Saving of prosecutions under other laws
2 Power to make rules	6 Power to place neglected children under supervision
3 Confirmation and publication of rules	7. Extent of Act
4 Punishment for breach of rules	

THE FEMALE INFANTICIDE PREVENTION ACT, 1870

ACT NO VIII OF 1870 *

(Received the assent of the Governor-General on the 18th March, 1870)

An Act for the prevention of the murder of Female Infants.

WHEREAS the murder of female infants is belived to be commonly

Preamble committed in certain parts of British India and whereas it is necessary to make

better provision for the prevention of the said offence ; It is hereby enacted as follows —

1 If it shall appear to the [Provincial Government][†] that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the [Provincial Government][†] may,[‡] declare, by notification published in the official Gazette, and in such other manner as the [Provincial Government][†] shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family, or persons

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply

2 When such notification shall have been published as aforesaid it shall be lawful for the [Provincial Government],[†] subject to the provisions of section 3, from time to time to make rules consistent with this Act, for all or any of the following purposes :—

(1) For making and maintaining registers of births, marriages and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable and for making, from time to time, a census of such persons, or of any other persons residing within such district

(2) For the entertainment of any police force in excess of the ordinary fixed establishment of police or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family or persons or for carrying out any of the provisions of this Act

(3) For prescribing how and by whom information shall be given to the proper officers of all births marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons

(4) For the regulation and limitation of expenses incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith

(5) For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable

(6) For defining the duties of any officer or servant appointed to carry out any rule made under this section

Notes — *Vide* G A 380

Confirmation and publication of rules

3 No rule or alteration made under section 2 shall take effect until it shall have been* published in the [official Gazette] †

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner as the [Provincial Government]† may direct

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

5 Nothing in this Act or in any rule made and published as aforesaid shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act. Provided that no person shall be punished twice for the same offence

6 If it appears to the Magistrate of the district that any person to whom the notification mentioned in section 1 applies neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible and that the life or health of such child is thereby endangered such Magistrate may, in his discretion place the child under such supervision as he may

* Certain words after this repealed by Act 33 of 1970 have been omitted

† The words within brackets have been substituted by G I Order of 1937

think proper, and shall, if necessary, remove the child from the custody of such person

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61 of the Code of Criminal Procedure

Nothing in this section shall affect the powers of a Magistrate under section 316 of the same Code

7 This Act shall, in the first instance, extend only to the North-Western Provinces, to the Punjab, and to Oudh,* the [Provincial Government]† of any other part of British India may, by notification published in the [official Gazette]† extend it to any part of the territories under the administration of the [Provincial Government]†

THE NORTHERN INDIA FERRIES ACT (XVII OF 1878)

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* Certain words after this repealed by G I Order of 1937 have been omitted

† The words within brackets have been substituted by G I Order of 1937

THE NORTHERN INDIA FERRIES ACT, 1878.

ACT NO XVII OF 1878 *

(Received the G. G.'s assent on the 9th November, 1878)

An Act to regulate Ferries in Northern India

WHEREAS it is expedient to regulate ferries in the Punjab, the
Preamble "North-Western Provinces, Oudh"† the
Central Provinces, Assam and Ajmere and

Merwara, It is hereby enacted as follows —

I—PRELIMINARY

Short title,

1 This Act may be called the
Northern India Ferries Act, 1878

It extends only to the territories respectively administered by the
Local extent 'Lieutenant-Governors ‡ of the Punjab and
the North-Western Provinces and the

Chief Commissioners of Oudh, the Central Provinces Assam and
Ajmere and Merwara

It shall come into force in each of the said territories on such date
Commencement as the [Provincial Government]§ may, by
notification in the official Gazette, fix in
this behalf

2 [Repeal—*Rep by Act I of 1938*]

3 In this Act the word 'ferry' includes also a bridge-of boats
Interpretation clause pontoons or rafts, a swing bridge, a flying-
bridge and a temporary bridge, and the
approaches to and landing places of a ferry

II—PUBLIC FERRIES

Power to declare establish
define and discontinue public 4 The [Provincial Government]§
ferries may, from time to time —

(a) declare what ferries shall be deemed public ferries, and the
respective districts in which for the purposes of this Act, they shall
be deemed to be situate

(b) take possession of a private ferry and declare it to be a
public ferry,

* Act XVII of 1878 came into force in the United Provinces on Jan 1 1880 (see

U P Act I of 1914 and Assam Act VIII of 1927 In the N W P Frontier Province,
references to the territories under the administration of the Lieutenant Governor of the
Punjab are to be construed as referring to N W F Frontier Province—*Vide Reg VII*
of 1901

Provinces of
the United

(c) establish new public ferries, where, in its opinion, they are needed,

(d) define the limits of any public ferry,

(e) change the course of any public ferry, and

(f) discontinue any public ferry which it deems unnecessary

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the official Gazette

Provided that, when a river lies between two Provinces, the powers conferred by this section shall, in respect of such river be exercised by the [Central Government]* by notification in the [official Gazette]* and not otherwise

'Provided that when a river lies between two Provinces, the powers conferred by this section shall, in respect of such river be exercised jointly by the [Provincial Governments]* of those Provinces by notifications in their respective official Gazettes' †

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river such alteration may be made, by an order under his hand by the Commissioner of the division in which such ferry is situate or by such other officer as the [Provincial Government]* may, from time to time appoint by name or in virtue of his office in this behalf

5 Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4, shall be enquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the [Provincial Government]*

6 The immediate superintendence of every public ferry shall, except as provided in section 7, "and section 7A † be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the [Provincial Government]* may from time to time, appoint by name or in virtue of his office in this behalf

and such Magistrate or officer shall except when the tolls at such ferry are leased make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat

7 The [Provincial Government]* may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town,

[and thereupon that ferry shall be managed accordingly]*

* The words within brackets have been substituted by G. I. Order of 1937

† The words within quotations and some other words after them were inserted by Act 38 of 1929. But the words after the word "Gazettes" have been omitted by C. I. Order of 1937

‡ Inserted by Act XIV of 1893 s. 65

*[7A The Provincial Government may direct that any public ferry wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the Province be managed by that Council or Board, and thereupon that ferry shall be managed accordingly]

†[8 The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the "Provincial Government" *]

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 or section 7A then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction]

9 All arrears due by the lessee of tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land revenue

10 The [Provincial Government]* may cancel the lease of the tolls of any public ferry, on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the [Provincial Government],* award

11 The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the [Provincial Government]* of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate subject to the approval of the Commissioner, may in each case direct

Notes —A subsidiary ferry established under this section is not a public ferry. It must be regarded as a private ferry and the Magistrate has no power to establish a subsidiary ferry within two miles of another subsidiary ferry. 5 Pat L J 500

12 Subject to the control of the [Provincial Government],* the Commissioner of a division, or such other officer as the [Provincial Government]*

* S 7A and the words "Provincial Government" have been substituted by G I C of 1937

† S 8 has been substituted for the original by Act III of 1900, s 1

may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

(a) for the control and the management of all public ferries with in such division and for regulating the traffic of such ferries,

*[(b) for regulating the time and manner at and in which and the terms on which the tolls of such ferries may be let by auction, and prescribing the person by whom auctions may be conducted],

(c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for and

(d) generally to carry out the purposes of this Act,

and when the tolls of a ferry have been let under section 8 such Commissioner or other officer may from time to time (subject as aforesaid), make additional rules consistent with this Act—

(e) for collecting the rents payable for tolls of such ferries,

(f) in cases in which the communication is to be established by means for a bridge-of boats pontoons or rafts, or a swing-bridge, flying bridge, or temporary bridge, for regulating the time and manner, at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same and

(g) in cases in which traffic is conveyed in boats, for regulating—

(1) the number and kinds of such boats and their dimensions and equipment

(2) the number of the crew to be kept by the lessee for each boat,

(3) the maintenance of such boats continually in good condition,

(4) the hours during which, and the intervals within which, the lessee shall be bound to ply, and

(5) the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may from time to time, require

13 [Except with the sanction of the Magistrate of the district or of such other officer as the [Provincial Government]† may, from time to time appoint in this behalf by name or in virtue of his office no person, shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry ‡]

Provided that, in the case of any specified public ferry, the [Provincial Government]† may, by notification in the official Gazette reduce or increase the said distance of two miles to such extent as it thinks fit

* Cl (b) of s 12 has been substituted for the original by Act III of 1886, s 1 (-)

† The words within brackets have been substituted by G I Order of 1937

‡ This paragraph has been substituted for the original paragraph by Northern India Ferries (Amendment) Act (III of 1886) s 1

Provided also that nothing hereinbefore contained shall—

prevent persons plying between the two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats 'which do not ply for hire, or' * which the [Provincial Government]† expressly exempts from the operation of this section

Notes —A W N 1905, 22.

Person using approaches &c , liable to pay toll 14 Whoever uses the approach to or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry.

Notes —The word 'approach' includes an approach from the high way to the landing place. It is not limited to the distance between the landing place and the river bank. A I R 1933 Lah 890=144 Ind Cas 662

15 [Tolls, according to such rates as are from time to time fixed by the [Provincial Government]†, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service

Provided that the [Provincial Government]† may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls]†

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the lease, § shall entitle the lessee to such abatement of the rate payable in respect of the tolls as may be fixed by the Commissioner of the Division or such other officer as the [Provincial Government]† may, from time to time, appoint in this behalf by name or in virtue of his office

16 The lessee or other person authorized to collect the tolls, of any public ferry shall fix a table of such tolls, legibly written or printed in the vernacular language and also, if the Commissioner of the Division so directs, in English, in some conspicuous place near the ferry, and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf

†[17 All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the Province]

Tolls rents compensation and fines as to form part of revenues of the Province

18 The [Provincial Government]† may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry

Compounding for tolls

* The words quoted have been inserted by Northern India Ferries (Amendment) Act III of 1896 s 2 (1)

† by G I Order of 1937, of tolls of any persons et II of 1901, has

Provided also that nothing hereinbefore contained shall—

prevent persons plying between the two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats 'which do not ply for hire, or' * which the [Provincial Government]† expressly exempts from the operation of this section

Notes—A W N 1905 22

Person using approaches &c liable to pay toll

14 Whoever uses the approach to or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry.

Notes—The word 'approach' includes an approach from the high way to the landing place. It is not limited to the distance between the landing place and the river bank. A I R 1933 Lah 890 144 Ind Cas 662

15 [Tolls, according to such rates as are from time to time fixed by the [Provincial Government]†, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service

Provided that the [Provincial Government]† may, from time to time, declare that any persons animals, vehicles or other things shall be exempt from payment of such tolls †

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the lease, § shall entitle the lessee to such abatement of the rate payable in respect of the tolls as may be fixed by the Commissioner of the Division or such other officer as the [Provincial Government]† may, from time to time, appoint in this behalf by name or in virtue of his office

16 The lessee or other person authorized to collect the tolls, of any public ferry shall fix a table of such tolls, legibly written or printed in the vernacular language, and also if the Commissioner of the Division so directs, in English in some conspicuous place near the ferry,

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf

†[17 All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the Province]

Tolls, rents compensation and fines as to form part of revenues of the Province

18 The [Provincial Government]† may, if it thinks fit from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry

Compounding for tolls

* The words quoted have been inserted by Northern India Ferries (Amendment) Act of 1896 s 2 (1)

† Section 17 and the words within brackets have been substituted by G I Order of 1937 exemption from payment of tolls of any persons are exempted by s 3 of Act II of 1901, has

tuted for the original word by Act "

III—PRIVATE FERRIES

19 The Commissioner of the Division may with the previous sanction of the [Provincial Government]*
 Power to make rules from time to time, make rules for the main
 tenance of order and for the safety of passengers and property at
 ferries other than public ferries

20 The tolls at such ferries shall not exceed the highest rates for
 Tolls the time being fixed under section 15 for
 similar public ferries

IV—PENALTIES AND CRIMINAL PROCEDURE

21 Every lessee or other person
 authorized to collect the tolls of a public
 ferry, who neglects to affix and keep in
 good order and repair the table of tolls
 Penalty for breach of provi-
 sions as to table of tolls list of
 tolls and return of traffic

mentioned in section 16

or who wilfully removes, alters or defaces such table or allows
 it to become illegible

or who fails to produce on demand the list of the tolls mentioned
 in section 16,

and every lessee who neglects to furnish any return required
 under section 12

shall be punished with fine which may extend to fifty rupees

22 Every such lessee or other person as aforesaid and any person
 in possession of a private ferry asking more
 than the lawful toll or without due cause
 delaying any person, animal vehicle or
 other thing shall be punished with fine which may extend to one
 hundred rupees
 Penalty for taking unauthori-
 sed tolls and for causing delay

Notes—8 A L J 1324 65 P R 1887 Cr

23 Every person breaking any rule made under section 12 or
 section 19 shall be punished with imprison-
 ment for a term which may extend to six
 months, or with fine which may extend to
 two hundred rupees, or with both
 Penalty for breach of rules
 made under sections 12 and 19

24 When any lessee of the tolls of a public ferry make default
 in the payment of the rent, payable in
 respect of such tolls or has been convicted
 of an offence under section 23, or having
 been convicted of an offence under section 21 or section 22 is again
 convicted of an offence under either of those sections,
 the Magistrate of the district may with the sanction of the
 Commissioner of the Division, cancel the lease of the tolls of such
 ferry, and make other arrangements for its management during the
 whole or any part of the term for which the tolls were let
 Cancellation of lease on default
 or breach of rules

25 Every person crossing by any public ferry or using the
 approach to or landing-place thereof, who
 refuses to pay the proper toll, every
 person—
 Penalties on passengers offend-
 ing

* The words within brackets have been substituted by C. I. Order of 1937

who with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll or

who obstructs, any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who after being warned by any such toll collector, lessee or assistant not to do so goes or takes any animals, vehicles or other things into any ferry-boat or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave or remove any animals, vehicles, or goods from any such ferry-boat or bridge, on being requested by such toll collector, lessee or assistant to do so,

shall be punished with fine which may extend to fifty rupees.

Notes — Where a *ghat* of a public ferry is also provided by the Railway authorities as

***[26** Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions]

Penalty for maintaining private ferry within prohibited limits

27 Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any fine realized under section 25 or 26 may, notwithstanding anything contained in section 17, be at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Fines payable to lessee

28 Whoever navigates, anchors, moors and fastens any vessel or raft or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both and the toll collector or lessee of the tolls of such ferry or any of his assistants may seize and detain such vessel, raft or timber pending the enquiry and assessment hereinafter mentioned

Penalty for rash navigation and stacking of timber

29 The Police may arrest without warrant any person committing an offence against section 25 or section 28

Power to arrest without warrant

30 Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XXII of the Code of Criminal Procedure, 1882† may try any offence against this Act in manner provided by that Chapter

Power to try summarily

* Section 26 has been substituted for the original by Act III of 1886 s. 2 (3)

† The reference to Chapter XXII of Act V of 1872 has been altered in accordance Act V of 1882 s. 3 But now see Act V of 1890

31 Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act, and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one under section 28, by the sale of the vessel raft or timber causing the damage, and of anything found in or upon such vessel or raft

The Commissioner of the Division may, on the appeal of any person deeming himself aggrieved by an order under this section reduce or remit the amount payable under such order

V—MISCELLANEOUS

32 When the lease for the tolls for any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment and all other material appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the [Provincial Government]* may in each case direct) until such Magistrate can conveniently procure proper substitutes thereof

33 When any boats or their equipment, or any materials or appliances suitable for setting up a ferry are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the [the Central Government (where the transport is in connection with the affairs of the Central Government) and the Provincial Government in other cases,]* may in each case direct) until such transport is completed

34 No suit to ascertain the amount of any compensation payable or abatement of rent allowable, under this Act, shall be cognizable by any Civil Court

35 The [Provincial Government]* may, from time to time, delegate under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a Division or Magistrate of a district, or to such other officer as it thinks fit by name or by virtue of his office

36 *Validation of proceeding since repeal of Regulation VI of 1819 in the Punjab—Repealed by Act VII of 1891, Schedule I*

* The words within brackets have been substituted by G. I. Order of 1937

THE INDIAN FISHERIES ACT (IV OF 1897)

CONTENTS

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SECTION 1 Title and extent	5 Destruction of fish by poisoning of water
2 Act to be read as supplemental to other Fisheries Laws	6 Protection of fish in selected waters by rules of Provincial Government
3 Definitions	7 Arrest without warrant for offences under this Act
4 Destruction of fish by explosives in inland waters and on coasts	

THE INDIAN FISHERIES ACT, 1897.*

ACT NO IV OF 1897.

(Received the assent of the Governor General on the 4th February, 1897)

An Act to provide for certain matters relating to Fisheries in British India.

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India It is hereby enacted as follows —

Title and extent 1 (1) This Act may be called the Indian Fisheries Act, 1897

(2) It extends to the whole of British India ††

2 Subject to the provisions of sections 8 and 10 of the General Clauses Act, 1887 § this Act shall be read as supplemental to any other enactment for the time being in force relating to fisheries in any part of British India †

Definitions 3 In this Act, unless there is anything repugnant in the subject or context,—

(1) "fish" includes shell-fish,

(2) "fixed engine" means any net cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way and

(3) "private water" means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner lessee or in any other capacity

Explanation —Water shall not cease to be "private water" within

has been

the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

4 (1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend two hundred rupees

Destruction of fish by explosives in inland waters and on coasts

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast, and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast

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eservoirs

5 (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees

Destruction of fish by poison
ing of waters

(2) The [Provincial Government]* may, by notification in the official Gazette, suspend the operation of this section in any specified area, and may in like manner modify or cancel any such notification

Notes —Pollution of sea water is not allowed (1906) 1 K B 648

6 (1) The [Provincial Government]* may make rules for the purposes hereinafter in this section mentioned, and may by a notification in the official Gazette apply all or any of such rules to such waters, not being private waters, as the [Provincial Government]* may specify in the said notification

Protection of fish in selected waters by rules of [Provincial Government]*

(2) The [Provincial Government]* may also, by a like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein

(3) Such rules may prohibit or regulate† all or any of the following matters, that is to say —

(a) the erection and use of fixed engines,

(b) the construction of weirs, and

[(c) the dimension and kind of the nets to be used and the modes of using them]‡

ing word.
• 11 of 1929
substituted

(c) the dimension and kind of the contrivances to be used for taking fish generally or any specified kind of fish and the modes of using such contrivances.

[(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years]*

(5) In making any rule under this section the [Provincial Government]† may—

(a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in, and

(b) provided for—

(i) the seizure forfeiture and removal of fixed engines erected, or used, or nets used, in contravention of the rule and

(ii) the forfeiture of any fish taken by means of any such fixed engine or net

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication

7 (1) Any Police-officer, or other person specially empowered by the [Provincial Government]† in this behalf either by name or as holding any office, for the time being may, without an order from a Magistrate and without warrant arrest any person committing in his view any offence punishable under section 4 or 5 or under any rule under section 6—

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address or if there is reason to doubt the accuracy of the name and address if given

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate except under the order of a Magistrate for his detention ‡

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Recovery of rents fees and
other moneys payable to Govern-
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leases and licenses granted by them may be
in like manner as if they were arrears of land rev-

THE FOREIGNERS ACT (III OF 1864.)

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	28 Persons may be exempted from provisions of this Act

THE FOREIGNERS ACT, 1864 *

ACT NO III OF 1864

(Received the G. G.'s assent on the 12th February, 1864)

An Act to give the Government certain powers with respect to Foreigners

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning in [British India] † or from passing through or travelling therein, without the consent of the Government **It is enacted as follows** —

Preamble

British India except as regards
d in force in Sonthal Parganas
in the Angul District by Reg
1916 s 2 in Upper Burma
British Baluchistan by Reg 2

† In Burma

† In Burma for the words British India read British Burma vide G. B. Order of 1937.

Governor General of India in Council 18 B 636 As regards the powers of the Commissioner of Police vide 85 Ind Cas 138-26 Gr L J 458=49 B 222=26 Bom L R 1257

3A.* (1) Whenever [in a Presidency-town the Commissioner of Police, or elsewhere]† the Magistrate of the district considers that the [Central Government]‡ should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the [Central Government]‡ and at the same time issue a warrant for the apprehension of such foreigner

(2) Any officer issuing a warrant under sub-section (1) may, in his discretion, direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody

(3) Any person executing a warrant under sub-section (1) may search for and apprehend the foreigner named in such warrant, and, subject to any direction issued under sub-section (2), shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant

(4) When a foreigner for whose apprehension a warrant has been issued under sub-section (1) is produced or appears before the officer issuing such warrant such officer may direct him to be detained in custody pending the orders of the [Central Government],‡ or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained

(5) Any officer who has in accordance with the provisions of sub-section (4) ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the [Central Government]‡ On the receipt of a report under this sub-section the [Central Government]‡ shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3

Foreigner refusing to remove or returning without licence after removal may be apprehended and detained

4 If any foreigner ordered to remove himself from [British India]§ or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do or if any foreigner, having removed himself from [British India]§ in consequence of an order issued under any of the provisions of this Act, or having been removed from [British India]§ under any of the said provisions shall wilfully return thereto without a licence in writing granted by the [Central Government],‡|| such

1937

vide G. O. Order of 1937

|| Certain words after this repealed by G. I. Order of 1937 and G. O. Order of 1937 have been omitted

foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the [Central Government],*† upon such terms and conditions as the said [Central Government]*† shall deem sufficient for the peace and security of [British India]‡, and of the Allies of Her Majesty, and of the neighbouring Princes and States§

5 Whenever the [Central Government]* shall consider it necessary to take further precautions in respect of foreigners residing or travelling in [British India]‡ or any part thereof it shall be lawful for the [Central Government]*, by a notification published in the [official Gazette]||, to order that the provisions of this and the subsequent sections of this Act shall be in force in [British India]‡, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared and thereupon, and for such period the whole of this Act including this and the subsequent sections shall have full force and effect in [British India]‡ or such part thereof as shall have been so specified

The [Central Government]* may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein. Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any foreign minister duly accredited by his Government to any consul or vice-consul, to any person under the age of fourteen years, or to any person in the service of Her Majesty

Proviso

6 Every foreigner on arriving in any part of [British India]‡ in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within [British India]‡, or from any port or place within [British India]‡, where all the provisions of this Act are not in force, shall, [if he arrive at a Presidency-town, forthwith report himself to the Commissioner of Police of such town,

Every foreigner to report his arrival in India in certain cases

* The words within brackets have been substituted in British India by G. I. Order of 1937. In Burma for these words read the word Governor, vide G. B. Order of 1937.

† Certain word after this repealed by G. I. Order of 1937 and G. B. Order of 1937 have been omitted.

‡ In Burma for the words British India read British Burma, vide G. B. Order of 1937.

§ In Burma at the end of the section add the following paragraph —

the separation of Burma
in British India in consequence
of the separation, as it applies to
Burma after the separation.

tion

|| In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Gazette', vide G. B. Order of 1937.

Governor General of India in Council 18 B 636 As regards the powers of the Commissioner of Police vide 80 Ind Cas 139—96 Cr L J 458—49 B 222—26 Bom L R 125

3A.* (1) Whenever [in a Presidency town the Commissioner of Police, or elsewhere]† the Magistrate of the district considers that the [Central Government]‡ should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the [Central Government]‡ and at the same time issue a warrant for the apprehension of such foreigner

(2) Any officer issuing a warrant under sub section (1) may, in his discretion direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody

(3) Any person executing a warrant under sub section (1) may search for and apprehend the foreigner named in such warrant and, subject to any direction issued under sub section (2) shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant

(4) When a foreigner for whose apprehension a warrant has been issued under sub section (1) is produced or appears before the officer issuing such warrant such officer may direct him to be detained in custody pending the orders of the [Central Government]‡ or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained

(5) Any officer who has in accordance with the provisions of sub section (4) ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the [Central Government]‡ On the receipt of a report under this sub section the [Central Government]‡ shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3

Foreigner refusing to remove or returning without licence after removal may be apprehended and detained

4 If any foreigner ordered to remove himself from [British India]§ or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do or if any foreigner, having removed himself from [British India]§ in consequence of an order issued under any of the provisions of this Act, or having been removed from [British India]§ under any of the said provisions shall wilfully return thereto without a licence in writing granted by the [Central Government],‡ such

Any licence may be revoked at any time by the [Central Government],* or by the officer who granted the licence]

14 If any foreigner travel in or attempt to pass through any part of [British India]† without such licence as aforesaid or beyond the districts or limits mentioned therein, or after such licence shall have been revoked, or shall violate any of the conditions therein specified he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of [Central Government]‡ whilst on duty or by any Police-officer

15 If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a Police officer, he shall be delivered over as soon as possible to a Police-officer, and forthwith carried before the Magistrate of the district

Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the [Central Government],§ and shall cause the person brought before him to be discharged, [or to be conveyed to one of the Presidency-towns]|| or pending the orders of such Government to be detained

16 Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district or by any officer authorised to grant licences, and shall be put to as little inconvenience as possible during his detention in custody

¶ **[17]** The Central Government may order any person apprehended or detained under the provisions of this Act to remove himself from any part of British India by sea or by such other route as the Central Government may direct or the Central Government may cause him to be removed from that part of British India by such route and in such manner as to that Government may seem fit]

* The words within brackets has been substituted by G I Order of 1937

† In Burma for the words 'British India' read the words 'British Burma' vide G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Government' vide G B Order of 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

|| In British Burma the words within brackets have been omitted by G B Order of 1937

* Section 17 has been substituted in British India by G I Order of 1937 In British

detained under the provisions of this Act in which all the officers or by such route as the Central Government may cause him to be removed from any such part

of British India by such route and in such manner as to the Governor shall seem fit vide G B Order of 1937

or, if he arrive at any other place, then he shall]* forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports, by the [Central Government]†

7 The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names the nation to which he belongs, the place from which he shall have come the place or places of his destination, the object of his pursuit, and the date of his arrival [in such Presidency-town or other place]* The report shall be recorded by the officer to whom it is made

Foreigners being masters of vessels or employed therein to report themselves when they ceased to be so employed

8 The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if such person shall be in any part of [British

India]‡ in which all the provisions of this Act are for the time being in force after he shall have ceased to be actually employed in a vessel he shall forthwith report himself in manner aforesaid

9 If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a licence

Foreigners neglecting to report themselves may be dealt with in like manner as foreigner travelling without a licence

10 No foreigner shall travel in or pass through any part of [British India]‡ in which all the provisions of this Act are for the time being in force without a licence

No foreigner to travel in India without a licence

§[11 Licences under this Act may be granted by the Central Government or by officers specially authorised by that Government]

Grant of licences

12 Every such licence shall state the name of the person to whom the licence is granted, the nation to which he belongs the district or districts through which he is authorized to pass or the limits within which he is authorized to travel and the periods (if any) during which the licence is intended to have effect

What to be stated in licence

||[13 The licence may be granted subject to conditions and may be revoked

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Any licence may be revoked at any time by the [Central Government],* or by the officer who granted the licence]

14. If any foreigner travel in or attempt to pass through any part of [British India]† without such licence as aforesaid, or beyond the districts or limits mentioned therein, or after such licence shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of [Central Government]‡ whilst on duty, or by any Police-officer.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a Police officer, he shall be delivered over as soon as possible to a Police-officer, and forthwith carried before the Magistrate of the district.

Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the [Central Government],§ and shall cause the person brought before him to be discharged, [or to be conveyed to one of the Presidency-towns]|| or pending the orders of such Government to be detained.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorised to grant licences, and shall be put to as little inconvenience as possible during his detention in custody

¶ [17. The Central Government may order any person apprehended or detained under the provisions of this Act to remove himself from any part of British India by sea or by such other route as the Central Government may direct, or the Central Government may cause him to be removed from that part of British India by such route and in such manner as to that Government may seem fit]

* The words within brackets has been substituted by G. I. Order of 1937.

† In Burma for the words "British India" read the words "British Burma"; vide G. B. Order of 1937

‡ In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the word "Government", vide G. B. Order of 1937.

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|| In British Burma the words within brackets have been omitted by G. B. Order of 1937

¶ G. I. Order of 1937 In British

... added or detained under the provisions of this Act to remove himself from any part of British Burma in which all ... by sea or by such other route as the Governor may direct, or the Governor may cause him to be removed from any such part of British Burma by such route and in such manner as to the Governor shall seem fit

Vide G. B. Order of 1937

18 The [Central Government]* may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the [Statute 3 and 4 William IV, Chapter 85, section 8]† from travelling in or passing through any part of [British India]‡ in which all the provisions

[Central Government]* may prohibit persons not being natural born subject from travelling or passing through any part of India without a licence

of this Act may, for the time being, be in force, and from passing from any part thereof to another without a licence to be granted by such officer or officers as shall be specified in the order and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner and the [Central Government]* may order such person to be detained in safe custody or under the surveillance of the Police so long as it may be deemed necessary for the peace and security of [British India]‡ or any part thereof

19 [Omitted by G I Order of 1937 and G B Order of 1937]

20 It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any Police-officer under the authority of such

Certain officers may board vessels to ascertain whether foreigners are on board

Commissioner or Magistrate, to enter any vessel in any port or place within [British India]‡ in which all the provisions of this Act may for the time being, be in force in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel, and it shall be lawful for such Commissioner of Police Magistrate, or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose, and the master or commander of such vessel shall also, before any

Master of vessel to furnish list of passengers and to give information respecting them

list in writing of the places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel or touching those who may have disembarked in any part of [British India]‡ as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† The Government of India Act 1833 (3 & 4 Will IV, c 85) is now repealed excepting s 112 by the Government of India Act (9 & 10 Geo V c 101) For definition of natural born British subject, see s 1 of British Nationality and Statute of Aliens Act 1914 (4 & 5 Geo V c 17)

‡ In Burma for these words read the words 'British Burma', vide G B Order of 1937

If any foreigner on board such vessel in any part of [British India]* shall refuse to give an account of his Foreigner refusing to give account of himself not to be allowed to disembark objects of pursuit in [India]* or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark or he may be dealt with in the same manner as a foreigner travelling in [British India]* without a licence

21 If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code

22 If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requirements of this Act he shall on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees

23 Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code

24 [Fines imposed under this Act how to be recovered] (Rep by Act X of 1914)

25 The [Central Government]† may exempt any person, or any class of persons, either wholly or partially or temporarily or otherwise from all or any of the provisions of this Act contained in any of the sections, subsequent to section 5 and may at any time revoke any such exemption

THE FOREIGN RELATIONS ACT (XII OF 1932)

CONTENTS.

PREAMBLE	Sections
Sections	Sections
1 Short title and extent	3 Power to forfeit certain publications or detain them in the course of transmittal through post
2 Power of Central Government to prosecute in certain cases of defamation	4 Proof of states of persons defamed

THE FOREIGN RELATIONS ACT, 1932

ACT NO XII OF 1932

(Received the assent of the Governor General on the 8th April, 1932)

An Act to provide against the publication of statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign States

WHEREAS it is expedient to provide against the publication of state-

* In Burma for the read British Burma

† In British India the of 1907 But in

read Burma and for the words British India* of 1937

acts have been substituted by G.O. Order Governor vide G.O. Order of 1931

ments likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign States It is hereby enacted as follows —

Notes —It is a recognised principle of International Law that states in their relations with other states are responsible for acts committed by persons within their jurisdiction

Short title and extent

1 (1) This Act may be called the Foreign Relations Act, 1932

[(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Paraganas]*

2. Where an offence falling under Chapter XXI of the Indian Penal Code† is committed against a Ruler of a State [outside but adjoining India]§ or against the consort or son or principal Minister of such Ruler, the [Central Government]† may make or authorise any person to make a complaint in writing of such offence, and notwithstanding anything contained in section 198 of the Code of Criminal Procedure 1898† any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint †

3 The provisions of sections 99A to 99G of the Code of Criminal Procedure 1898‡ and of sections 27B to 27D of the Indian Post-office Act 1898,** shall apply in the case of any book newspaper or other document containing matter which is defamatory of a Ruler of a State [outside but adjoining India]§, or of the consort or son or principal Minister of such Ruler and tends to prejudice the maintenance of friendly relations between His Majesty's Government and the Government of such State, in like manner as they apply in the case of a book newspaper or document containing seditious matter within the meaning of those sections

[Provided that for the purposes of this section the said provisions shall be construed as if for the words [Provincial Government]†† wherever they occur, the words [Central Government]† were substituted]††

* In Burma sub section (2) has been omitted by G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

‡ LV of 1860

§ In Burma for the words with n brackets read the words outside India and Burma but adjoining India or Burma vide G B Order of 1937

|| V of 1898

† After this the explanation has been omitted by G I Order of 1937 and G B Order of 1937 respectively

** VI of 1898

†† In Burma the proviso has been omitted by G B Order of 1937

4 Where, in any trial of an offence upon a complaint under section 2, or in any proceeding before [a High Court]* arising out of section 3 there is a question whether any person is a Ruler of any State or is the consort or son or principal Minister of such Ruler, a certificate [under the hand of a Secretary to the Government of India]† that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact

THE FOREIGN RECRUITING ACT (IV OF 1874)

CONTENTS

PREAMBLE	SECTIONS
1 Short title local extent and commencement	4 Power to impose conditions
2 Foreign State defined	5 Power to rescind or vary orders
3 Power to prohibit or permit recruiting	6 Offences
	7 Place of trial

THE FOREIGN RECRUITING ACT, 1874

ACT NO IV OF 1874 †

(Received the Governor-General's assent on the 24th February, 1874)

An Act to control recruiting in British India for the service of Foreign States

[WHEREAS it is expedient that the Governor General in Council should exercise full control over recruiting in British India for the service of Foreign States], § It is hereby enacted as follows —

Short title	1. This Act may be called the Foreign Recruiting Act, 1874
Local extent	[It extends to the whole of British India] §
[Commencement]	Rep by the Repealing Act, 1876 (XII of 1876)

* In Burma for the words within brackets read 'the High Court vide G B Order of 1937

† In Burma for the words within brackets read the words of the Governor vide G B Order of 1937

‡ Act IV of 1874 has been declared in force in the Arakan Hill District by Reg (IX of 1874) s 3 in Upper Burma (except Shan States) by Act (XIII of 1898) s 4

'Foreign State' defined

2 In this Act—

"Foreign State" includes any person or persons exercising or assuming to exercise, the powers of Government in or over any country, colony, province, or people beyond the limits of [British India]*

3 If any person is, within the limits of [British India]*, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the [Central Government]†, may [by order in writing signed by a Secretary to the "Central Government" ‡] § either prohibit such person from so doing, or permit him to do so subject to any conditions which the [Central Government] thinks fit to impose

4 The [Central Government]† may from time to time, by general order notified in the [official Gazette], either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit

5 The [Central Government]† may rescind or vary any order made under this Act in such manner, as he thinks fit

6 Whoever, in violation of the prohibition of the [Central Government]†, or of any condition subject to which permission to recruit may have been accorded,—

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both

7 Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure ‡

* In Burma for the words 'British India' read 'British Burma' vide G. B. Order of 1937

† In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the word 'Governor', vide G. B. Order of 1937

‡ In British India the words within quotations have been substituted by G. I. Order of 1937

THE INDIAN FOREST ACT (XVI OF 1927)

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	CHAPTER II OF RESERVED FORESTS		CHAPTER V OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT
3 4 5 6 7 8 9 10	Power to reserve forests Notification by Local Government Bar of accrual of forest rights Proclamation by Forest Settlement officer Inquiry by Forest Settlement officer Powers of Forest Settlement-officer	35 36 37 38	Protection of forests for special purposes Power to assume management of forests Expropriation of forests in certain cases Protection of forests at request of owners
			CHAPTER VI OF THE DUTY ON TIMBER AND OTHER FOREST PRODUCE
11 12 13 14 15 16 17	right is claimed Order on claims to rights of pasture or to forest produce Record to be made by Forest Settlement-officer Record where he admits claim Exercise of rights admitted Commutation of rights Appeal from order passed under section 11 section 12 section 15 or section 16	39 40	Power to impose duty on timber and other forest produce Limit not to apply to purchase money or royalty
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18 19 20 21 22 23	Appeal under section 17 Leaders Notification on declaring forest reserved Publication of translation of such notification in neighbourhood of forest	41 42 43	Power to make rules to regulate transit of forest produce Penalty for breach of rules made under section 41 Government and forest officers not liable for damage to forest produce at depot

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 57 Procedure when offender not known or cannot be found
 58 Procedure as to perishable property seized under section 52
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 63 Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks
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Section of the Old Act	Section of the New Act	Section of the Old Act	Section of the New Act	Section of the Old Act	Section of the New Act	Section of the Old Act	Section of the New Act
1	1	28	24	40	46	69	70
2	2	24	25	47	47	70	71
3	3	25	26	48	48	71	72
4	4	26	27	49	49	72	73
5	5	27	28	50	50	73	74
6	6	28	29	51	51	74	75
7	7	29	30	52	52	75	76
8	8	30	31	53	54	76	77
9	9	31	32	54	55	77	78
9A	10	32	33	55	56	78	79
10	11	33	34	56	57	79	80
11	12	34	Omitted	57	58	80	81
12	13	35	35	58	59	81	82
13	14	36	36	59	60	82	83
14	15	37	37	60	61	83	84
15	16	38	38	61	62	84	85
16	17	39	39	62	63		
17	18	40	40	63	64		
18	19	41	41	64	65		
19	20	42	42	65	66		
20	21	43	43	66	67		
21	22	44	44	67	Omitted		
22	23	45	45	68	Repealed		
					69		

THE INDIAN FOREST ACT, 1927

ACT NO XVI OF 1927

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor General on the 21st
September 1927)

An Act to consolidate the law relating to forests the transit of forest produce and the duty leviable on timber and other forest produce

WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce It is hereby enacted as follows —

Notes — The Forest Act, 1927, is a consolidation of the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. It is hereby enacted as follows —

Table Statement of Objects and Reasons

CHAPTER I

PRELIMINARY

Short title and extent 1 (1) This Act may be called the Indian Forest Act, 1927

(2) It extends to Bombay, Bengal Bihar and Orissa the United Provinces the Punjab the Central Provinces and the North West-Frontier Province (except the District of Hazara)

(3) The [Provincial Government]* of any other province may by notification in the [official Gazette]* extend this Act to the whole or any specified part of the province

Notes — The only other point which calls for further notice is the extent clause. The original Act extended to the province of Assam but by Regulation VII of 1891 the Indian Forest Act 1878 was repealed as far as it relates to Assam. This section accordingly omits Assam from the extent clause — *Table Statement of Objects and Reasons*

History of the Forest law in India — The Forest Act, 1927, is a consolidation of the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. It is hereby enacted as follows —

Government Forest
or affect any existing
in tance it was found necessary for
the Government was left to do so by
for public purposes. Act VII of
unsuitable for the purposes now
That Act drew no distinction between
the effect of more or less interference

the community it was absolutely
it gave no authority — *Table Statement of Objects and Reasons*
p 137 The insufficiency of Act VII

* Substituted by G. I. Order of 193

tion No 460 F dated the 6th November 1818 nor s 237 of the Contract Act will be applicable to this case 16 P R 1899 As regards forest produce—*vide* 1 Weir 755 9 M 373

CHAPTER II

OF RESERVED FORESTS

3 The [Provincial Government]* may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights or to the whole or any part of the forest-produce of which the Government is entitled a reserved forest in manner hereinafter provided

Reserved forest—Where the land is a part of the permanently settled estate it is a property and not the Government property within the meaning of the Forest Act and therefore cannot legally be the subject of reservation under Chapter II of the Act *Secretary of State v Abdul Rahman* 1923 Cal 377 76 I C 491

Notes—This Chapter lays down provisions for ascertaining securing and commuting the rights of private persons in any forest which is deemed necessary to reserve—*Statement Of Objects and Reasons of Act VIII of 1878* This section does not make the exercise of the power conferred dependent on the opinion or decision of the Local Government but upon a question of fact If the land actually fulfills that condition the Government can exercise the powers but not otherwise 29 B 450

4 (1) Whenever it has been decided to constitute any land a reserved forest, the [Provincial Government]* shall issue a notification in the [official Gazette]*—

(a) declaring that it has been decided to constitute such land a reserved forest

(b) specifying as nearly as possible, the situation and limits of such land and

(c) appointing an officer hereinafter called "the Forest Settlement-officer" to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads rivers, ridges or other well-known or readily intelligible boundaries

(2) The officer appointed under clause (c) of sub section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer

(3) Nothing in this section shall prevent the [Provincial Government]* from appointing any number of officers not exceeding three not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act

Notes—In order to avoid the delay and expense of an elaborate preliminary demarcation which was objected to in many quarters we have provided (section 4) that the notification of the proposal to constitute a reserved forest may be in general terms but have indicated more clearly (section 12) [now see section 20] that the final demarcation must be precise We have made more clear (section 4) the intention that the Forest Settlement-officer should not except under very exceptional circumstances be a Forest officer

* The words within brackets have been substituted by G I Order of 1937.

the difference to representations from British Burma and North Western Province we have provided an option of entrusting the forest settlement to two or three officers instead of one — *Statement of Objects and Reasons to Act VII of 1878* If the land actually fulfils the condition laid down in section 3 the Government can exercise the powers but not otherwise The test is, not what appears to the Local Government but what is the actual fact and as the enabling section gives the Local Government no power to decide that fact it can only be decided by recourse to the Court which have authority finally to decide on question of law and fact wherever their jurisdiction is not expressly barred by the legislation The power in section 4 of the Indian Forest Act (VII of 1878), to appoint an officer to enquire and determine as to rights is limited to land which it is proposed to constitute reserved forest and 'to constitute reserved forest', is a phrase defined in section 3 And under that definition the constitution of a reserved forest connotes as the object forest or waste land only The specified character of the land is an essential part of the Act defined According to the definition the phrase 'to constitute a reserved forest' means to convert land by notification from forest or waste The land therefore to which a proposal under section 4 relates must be forest or waste land and it is only in respect of such land that an officer appointed has power to enquire and determine *Dalrand v Ram Chandra* 29 B 480=7 Bom L R 496

5 After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or [on behalf of the Crown]* or some person in whom such right was vested when the notification was issued, and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with rules as may be made by the [Provincial Government]* in this behalf

Note.—
Latter
notification
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Reg 49 of 1936

In the
of such
Section
his Act
3—Cr

6 When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying as nearly as possible, the situation and limits of the proposed forest,
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest, and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof

Object— In order to meet the case of the wild tribes and illiterate persons who will in many instances be the possessors of rights over forest lands we have allowed in section 6 claims to be preferred orally to the Forest Settlement officer and made it obligatory on him to take such statement down in writing — *Statement of Objects and Reasons of Act VII of 1878* This section refers to land which is of the description mentioned in section 3 that is proceedings taken in respect of such land 1923 Cal 377 The accused grazed the cattle in certain waste land which was not reserved within section 20 of the Forest Act

* The words within brackets have been substituted by G I Order of 1937.

in contravention of a notification by Government prohibiting the public from grazing cattle there as it was intended to constitute the lands as forest reserve. The grass in the land was found to have been in the possession of the Government who were in the habit of selling the grass grown on lands at fixed price. It was also found that the accused knew that by so grazing they would cause wrongful loss to Government. *Held* that the accused was guilty of an offence under section 476 of the Penal Code. *In re Gurrani Siddiqui*, 1 Weir, 492.

7. The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

is of the description mentioned in section 3, that is the proceeding taken in respect of such land. *Secretary of State v. Abdul Pahaman* 1923 Cal 377.

8. For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is say —

(a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same, and

(b) the powers of a Civil Court in the trial of suits

9 Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

10 (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the [Provincial Government],* together with his opinion as to whether the practice should be permitted or prohibited wholly or in part

Treatment of claims relating to practice of shifting cultivation

* The words within brackets have been substituted by G. I. Order of 1937

(2) On receipt of the statement and opinion, the [Provincial Government]* may make an order permitting or prohibiting the practice wholly or in part

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the [Provincial Government].*

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the [Provincial Government]*

N B —This section corresponds to section 9A of the old Act

Notes — In section 10 we have made clear the alternative course which may be pursued in the case of claims to or over land and have also provided for compensation being given wholly or partly in land where the parties prefer land to money"—*Report of the Select Committee*

11 (1) In the case of a claim to a right in or over any land other than a right of way or right of pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

(i) exclude such lands from the limits of the proposed forest, or

(ii) come to an agreement with the owner thereof for the surrender of his rights, or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 †

(3) For the purpose of so acquiring such land—

(a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894, †

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act,

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with, and

(d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money

N B —The section corresponds to section 10 of the old Act

Notes — "When the land is forest or waste, the Forest officer, no doubt, has power to enquire into and determine as to rights of way or pasture, forest produce or water

* The words within brackets have been substituted by G. I. Order of 1937.

† I of 1894

courses, and he may admit or reject such claims with finality because he is dealing with land in respect of which he has been duly delegated jurisdiction. It is possible there may be other rights in or over land which may render it desirable for Government to acquire full owner ship and for such case section 10 of the Indian Forest Act, (=this section) provides without, however, extending the application of the section to any land incapable of constituting as reserved forest. Had such officer or Government similar power in respect of all lands whether forest or waste or not, then we think it is evident that section 83 of the Indian Forest Act (=section 84 of this Act) empowering Government to acquire any land whatsoever for the purpose of the Act under Land Acquisition Act would be superfluous. For section 10, (=this section) applies to all lands forest or waste or not the power given by section 83 (=section 84 of this Act) must already have been given. We would add that the provisions of section 9, extinguishing all claims not preferred within 3 months under section 6 or otherwise ascertained, could never have been intended, in our opinion to apply to rights for the ascertaining of which the Limitation Act provides a period of 12 years. 29 B 480-7 Bom L R 497 see also 12 M 105. The provisions of the Indian Forest Act VII of 1878 do not bar the jurisdiction of the Courts to decide whether the land in suit is or is not forest or waste-land. 29 B 480-7 Bom L R 496 see also 11 M 311.

Cf also 20 M 279, 21 B 396, 3 M L J 231

12 In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Order on claims to rights of pasture or to forest produce

Notes—From section 12 the provisions contained in section 10 of the Bill as introduced for the rejection of rights which were not habitually exercised by the claimants at the time of the notification under section 4 and which were not required for the beneficial use of the land or premises of the person claiming the same, have been omitted. —*Report of the Select Committee*

Record to be made by Forest Settlement officer

13 The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,—

(a) the name, father's name, caste, residence and occupation of the person claiming the right and

(b) the designation, position and area of all fields or groups of fields (if any) and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed

Notes—This section corresponds to section 12 of the old Act

14. If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered

Notes—This section corresponds to section 13 of the old Act. Where a manor was part of a royal forest and the Crown had the right to turn deer upon the waste to an unlimited extent, but upwards of twenty years no deer had been seen there and the lord of the manor enclosed a portion of the waste. *Held* that in determining whether sufficient common was left the right of the Crown is not to be taken into consideration. *Lake v Iasleton* 10 Ex 196=24 L J Ex 52

15. (1) After making such record the Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of reserved forest in respect of which the claim is made, pass such order as will ensure the continued exercise of the rights so admitted.

Exercise of rights admitted

(2) For this purpose the Forest Settlement-officer may—

(a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest produce (as the case may be) to the extent so admitted, or

(b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants, or

(c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the [Provincial Government]*

Notes—This section corresponds to section 14 of the old Act. Demurer overruled to a bill by the poor of a Parish claiming a right by grant from the Crown to cut wood on waste lands within a royal forest for their own use and for sale to the other inhabitants of the Parish. *Willingale v. Vautland* 36 L. J. C. 61—L. R. 3 Eq. 103

16 In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall subject to such rules as the [Provincial Government]* may make in this behalf, commute such rights by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit

Notes—This section corresponds to section 15 of the old Act. This power is given to the Forest Settlement officer for the preservation of the reserved forest

17. Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the [Provincial Government]* in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12 section 15 or section 16 present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector as the [Provincial Government]* may, by notification in the [official Gazette]*, appoint to hear appeals from such orders :

Provided that the [Provincial Government]* may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the [Provincial Government]* and, when the forest Court has been so established all such appeals shall be presented to it

N B—This section corresponds to section 16 of the old Act

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decision and to correct the error 17 M 194 Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by this section may be excused by section 3 of the Limitation Act 10 M 210

* The words within brackets have been substituted by G. I. Order of 1937

18 (1) Every appeal under section 17 shall be made by petition in writing and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the [Provincial Government]*, be final.

Notes—This section corresponds to section 17 of the old Act. This section lays down the procedure to be adopted in filing an appeal, hearing it and in delivering the judgment of the appellate Court.

19. The [Provincial Government]*, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

Notes—This section corresponds to section 18 of the old Act. By this section the claimants may, if they think fit, appoint pleaders to act on their behalf.

Notification declaring forest reserved

20 (1) When the following events have occurred, namely—

(a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any made under that section or section 9 have been disposed of by the Forest Settlement officer,

(b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court, and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894† have become vested in the Government under section 16 of that Act, the [Provincial Government]* shall publish a notification in the [official Gazette],* specifying definitely according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

N B—This section corresponds to section 19 of the old Act.

Notes—This section lays down that the Local Government may publish a notification declaring a forest to be reserved when certain events have occurred and that forest

* The words within brackets have been substituted by G. I. O. 1927.
† I of 1894.

become reserved from the date specified in the notification. One of the events which must have occurred before the Governor General in Council can declare a forest reserved is the disposal of all claims made by owners and occupiers of land. 12 M 226. Grazing in Government waste land in contravention of a notification under this section is an offence under s. 426 of the Penal Code. 1 Weir 492, 1 Weir 497. But grazing cattle in a forest under re-settlement is not an offence. 8 Bom L R 549.

Publication of translation of such notification in neighbourhood of forest. 21 The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

Notes—This section corresponds to section 20 of the old Act. Publication of translation of such notification in the neighbourhood of forest is with a view to give information to the native owners who do not understand English.

22 The [Provincial Government]* may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18 and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be omitted under section 16.

N B—This section corresponds to section 21 of the old Act.

Notes—We have made a new provision for the revision by the Local Government at any time not exceeding five years from the date of the Notification under section 20 or any settlement effected under section 14 which experience has shown to be unworkable. —*Report of the Select Committee*

23 No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or [on behalf of the Crown]* or some person in whom such right was vested when the notification under section 20 was issued.

Notes—This section corresponds to section 22 of the old Act.

24 (1) Notwithstanding anything contained in section 23, no right not to be alienated without sanction. Right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise without the sanction of the [Provincial Government]*.

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house. (2) No timber or other forest produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

Notes—We have provided that rights appendant to any land or house may be freely alienated therewith. —*Report of the Select Committee*

25 The Forest officer may with the previous sanction of the [Provincial Government]* or of any officer duly authorised by it in this behalf, stop any public or private way or water course.

Power to stop ways and water courses in reserved forests

* The words within brackets have been substituted by G. I. Order of 1937

in a reserved forest provided that a substitute for the way or water-course so stopped which the [Provincial Government]* deems to be reasonably convenient, already exists or has been provided or constructed by the Forest-officer in lieu thereof

Notes—Chapters III and IV contain provisions regarding forest lands belonging to Government or to which the Government has proprietary rights which it is deemed necessary to subject, as district or village forests to regulations less stringent than those indispensable for recorded forests—*Statement of Objects and Reasons of Act VII of 1928* This section has been amended in phraseology so as to admit of forests the use of which is essential to village communities or in which such communities have rights jointly with Government, being assigned to such communities under suitable precautions against waste or misappropriation—*Report of the Select Committee*

Acts prohibited in such forests

26 (1) Any person who—

(a) makes any fresh clearing prohibited by section 5, or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the [Provincial Government]* in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest,

or who, in a reserved forest—

(c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf,

(d) trespasses or pastures cattle, or permits cattle to trespass,

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber,

(f) fells girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same,

(g) quarries stone, burns lime or charcoal or collects, subjects to any manufacturing process, or removes, any forest-produce,

(h) clears or breaks up any land for cultivation or any other purpose,

(i) in contravention of any rules made in this behalf by the [Provincial Government]* hunts, shoots, fishes, poisons water or sets traps or snares, or

(j) in any area in which the Elephants Preservation Act, 1879,† is not in force, kills or catches elephants in contravention of any rules so made,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid

(2) Nothing in this section shall be deemed to prohibit—

(a) any act done by permission in writing of the Forest officer, or under any rule made by the [Provincial Government]*, or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or [on behalf of the Crown]* under section 23

* The words within brackets have been substituted by G. I. Order of 1937

† VI of 1879

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the [Provincial Government]* may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit

N B.—This section corresponds to section 25 of the old Act

Summons Case—A case under this section is a “summons case” and the Tasildar if he did not find the accused guilty was bound to acquit him and no order under s 437 Cr P Code directing further enquiry, could be passed P L R 1900 Cr 50=19 P R 1900 Cr There is no provision either in this Act or the Rules framed thereunder to award compensation for damages in respect of protected forest 8 Bom L R 987

Clause (b)—A person is said to set fire . . .
it on fire directly and not if it catches
The accused kindled a fire in his master
forest and thence to a reserved forest *Held* that the accused could have set fire to either of the forests within the meaning of clause (b) 36 Ind Cas 138=17 Cr L J 458=30 P R (Cr) 1916 51 P W R 1916

Clause (c)—Mere possession of flint or steel is no offence 4 Bom L R 935

Clause (d)—Trespass in reserved forests is punishable Rat Un Cr C 602
The question whether the owner of cattle whose animals trespass in a reserved forest, is criminally liable under this clause depends upon the whole circumstances of each particular case. In great many cases the question will resolve itself into did he or did he not take proper precautions to prevent such trespass and it does not depend upon the presence or absence of the owner at the moment. 16 P R 1909 Cr=40 P W R 1909 Cr=4 Ind Cas 866 This clause is applicable to any one who does any act mentioned herein 16 Cr L J 485=29 Ind Cas 325=11 N L R 76 Owners of cattle cannot be made criminally liable for the acts of the grazer unless intention is proved to do so 163 Ind Cas 469 38 Cr L J 588=A L R 1937 Nag 169 A person who has a licence for grazing cannot be convicted under this clause unless by an overt Act or negligent omission he permitted the cattle to trespass into reserved forest 87 Ind Cas 918=26 Cr L J 1030 The Berar grazing rules do not enforce a liability on a master for the acts of his servants *Ibid* but see 29 Ind Cas 325=11 N L R 76 If a person is found with a gun and ammunition in a reserved forest it may be presumed until the contrary is shown that he was engaged in hunting 1929 M W N 808 Levy of pound fees under Act I of 1871 is no bar to a prosecution under this clause 19 P R 1885 Cr A person's cattle were found grazing in Government Forest in charge of a boy. The person had not authorized either directly or indirectly the boy to graze the cattle in the forest *Held* that he could not be convicted A I R 1930 Nag 64=31 Cr L J 109=120 Ind Cas 414=1930 Cr C 152

Clause (f)—A person felling a number of trees in a forest is guilty of as many offences under clause (f) as the number of trees felled by him 43 Ind Cas 577=19 Cr L J 161

Clause (h)—No offence under this clause has been committed when it was found that the accused and his predecessors cultivated the land for many years A I R 1929 Nag 190

Clause (i)—The word hunt is used intransitively in this clause 12 Bom L R 590
The word ‘hunt’ implies motion A I R 1935 Nag 23 The accused who had his cattle reserved forest
2 B 406=20
J 824=40
of loaded gun
sequence A I R

Miscellaneous—There is no provision in this Act for compensation or damages 8 Bom L R 987=5 Cr L J 9 In the absence of anything in the Special Act and in intention to exclude the operation of the general criminal law should not be inferred 10 P R 1885 Cr The payment of rewards out of fines and confiscation is no part of the sentence Rat Un Cr C 900

* Substituted by G I Order of 1937

Power to declare forest no longer reserved

27. (1) The [Provincial Government]* may,† by notification in the [official Gazette] * direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved, but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

Notes —This section corresponds to section 26 of the old Act

CHAPTER III.

OF VILLAGE-FORESTS.

28. (1) The [Provincial Government]* may assign to any village community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The [Provincial Government]* may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made, may be provided with timber or other forest-produce or pasture, and their duties, for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village forests.

N B —This section corresponds to section 27 of the old Act

Notes —Chapters III and IV contain provisions regarding forest land belonging to Government or in which the Government has proprietary rights, which it is deemed necessary to subject as district or village forest, to regulations less stringent than those indispensable for reserved forests —*Report of the Select Committee*

CHAPTER IV

OF PROTECTED FORESTS

29 (1) The [Provincial Government]* may, by notification in the [official Gazette],* declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce or which the Government is entitled

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest"

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over

* Substituted by G I Order of 1937

† Certain words after this repealed by G. I. Order of 1937 have been omitted.

the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the [Provincial Government]* thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved

Provided that if, in the case of any forest-land or waste-land, the [Provincial Government]* thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the [Provincial Government]* may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities

N B —This section corresponds to section 28 of the old Act

Notes —Chapters III and IV contain provisions regarding forest land belonging to Government or in which the Government has proprietary rights which it is deemed necessary to subject as district or village forests to regulations less stringent than those indispensable for reserved forests —*Statement of Objects and Reasons of Act VII of 1923* The Legislature have provided in this section that no land shall be constituted a protected forest unless the nature and extent of the rights of Government and other persons in it have been enquired into and recorded at a survey or settlement or in some other sufficient manner At the same time it has been left open to any persons to dispute the correctness

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restore the status of the land to what it was before it again became protected forest
Therefore the provisions of sections 29 and 32 of the Forest Act, 1878, would apply to it
Ibid

Power to issue notification
reserving trees etc

30 The [Provincial Government]*
may, by notification in the [official
Gazette],—*

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification,

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the [Provincial Government]* thinks fit, and that the rights of private persons, if any over such portion shall be suspended during such term provided that the remainder of such forest be sufficient and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed, or

(c) prohibit from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process or removal of any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest

N B —This section corresponds to section 29 of the old Act

N.B. —to permit of the closing
he forest be
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made under the law existing .

Where 'breaking' only is fort
there has been only clearing .

(a) [= clause (a) of this section

is to be reserved is bad and a conviction for cutting trees described as reserved in such
notification under s 32 is illegal A I. R 1927 Cal 516

31. The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification

Publication of translation of
such notification in neighbour-
hood

Power to make rules for pro-
tected forests

32 The [Provincial Government]* may make rules to regulate the following matters, namely —

(a) the cutting, sawing conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests ,

(b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons ,

(c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such person ,

(d) the payments if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees or to collect and remove such timber or other forest-produce ,

(e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made ,

(f) the examination of forest produce passing out of such forests ,

(g) the clearing and breaking up of land for cultivation or other purposes in such forests

(h) the protection from fire of timber lying in such forests and of trees reserved under section 30 ,

(i) the cutting of grass and pasturing of cattle in such forests ,

(j) hunting shooting fishing poisoning water and setting traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879,† is not in force ,

(k) the protection and management of any portion of a forest closed under section 30 , and

(l) the exercise of rights referred to in section 29

* Substituted by G I Order of 1937.

† VI of 1879

Notes—By section 32 the Local Government is given power to make rules to regulate the exercise of recorded right so as to prevent in the interest of the community waste and injury to the forests—*Report of the Select Committee* For rules framed under this section under Act VII of 1878 for (1) Bombay vide pp 167 171 and 174 of the Bombay List of Local Rules and Orders Ed 896 (2) for protected forests at Naini Tal Ranikhet and Lalitpur, see p 62 of the North Western Provinces and Oudh List of Local Rules and Orders Ed 1894 (3) for rules made by the Government of P.
Parganas, the
Gazette 18
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Clause (g)—Here 'clearing' does not amount to breaking of ground where the notification issued under the Forest Act prohibited breaking of ground in a protected forest and the evidence only showed that the accused cleared the ground 43 A 291-25 A L J 148=99 Ind Cas 407=28 Cr L J 151, 102 Ind Cas 559 28 Cr L J 591

Penalties for acts in contraven-
tion of notification under sec-
tion 30 or of rules under section
32

33 (1) Any person who commits any
of the following offences, namely :—

(a) fells, girdles, lops, taps or burns any tree reserved under section 30 or strips off the bark or leaves from, or otherwise damages, any such tree,

(b) contrary to any prohibition under section 30, quarries any stone or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce,

(c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest,

(d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest

(e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid

(g) permits cattle to damage any such tree,

(h) infringes any rule made under section 32,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest the [Provincial Government]* may notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit

N B—This section corresponds to section 32 of the old Act

Notes—In acquitting an accused convicted of cutting trees reserved in protected forest under section 29 (a) [i.e. 30 (a) of this Act], held that protected forest may be notified

* Substituted by G I Order of 1937

either under s 28 (=s 29 of this Act) or s 34 (that section has been omitted in this Act) but the powers under both these sections are restricted to lands which are forest or waste lands. Whatever liability the accused might be under in regard to the provisions of any other law he could not be convicted under section 32 of Act VII of 1878 for the land which formed part of a survey number in an occupant's holding and which was assessed was not shown to be within the class of lands or to which the powers of Government under ss 28 29 and 34 of the Forest Act applied. 7 Bom L R 462—26 Cr L J 437. A particular area had formerly been protected forest within the meaning of Chapter 4 of Act VII of 1878 and in 1916 it had been removed from the category of 'protected forest' and placed in the category of 'reserved forest' afterwards in 1922 by notification it ceased to be reserved forest. *Held* the effect of the notification was to restore the status of the land to what it was before: it again became protected forest therefore the provisions of sections 29 and 32 of the Forest Act would apply to it. 46 A 128 25 Cr L J 699 =51 Ind Cas 711=1924 All 539.

The Forest Act 1878 is one curtailing the proprietary rights of individuals, and the Act and the notifications under it must be construed strictly where the rights of individuals are trenchoned upon. 55 P L R 1901. There is no provision either in the Act or the rules framed thereunder to award compensation for damages in respect of the protected forest. 8 Bom L R 937=5 Cr L J 9.

The accused, a contractor engaged by the Public Works Department quarried stones required for a public road, from a place which was pointed out to him by the officers of that department. The place in question was in a protected forest and no permission was taken of the Forest Department for quarrying. The accused was under these circumstances convicted of an offence under s 39 cls (a) (b) and (c) of the Indian Forest Act 1878 read with ss 4 and 114 of the Penal Code. *Held* reversing the conviction and the sentence that the accused was entitled to protection of s 79 of the Penal Code. 14 Bom L R 365=15 Ind Cas 802=13 Cr L J 530=1 Bom Cr C 128. Where a man enters a forest and cut down reserved trees he cannot be convicted both under s 32 of the Forest Act for cutting down reserved trees and s 417 of the Indian Penal Code for criminal trespass, the latter offence being included in the former. 11 A L J 310=14 Cr L J 424=20 Ind Cas 408. In case of conviction under this section the whole of the forest produce as regards which the offence has been committed should be confiscated and handed over to the Forest Department of the Government. 1 P R 1912 Cr =15 P W R 1912 Cr 13 Ind Cas 924=13 Cr L J 172 37 P L R 1902.

34 Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 30 or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

Nothing in this Chapter to prohibit acts done in certain cases

CHAPTER V

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT

Protection of forests for special purposes

35 (1) The [Provincial Government]* may, by notification in the [official Gazette],* regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation,
- (b) the pasturing of cattle, or
- (c) the firing or clearing of the vegetation,

* Substituted by G I Order of 1937

when such regulation or prohibition appears necessary for any of the following purposes —

(i) for protection against storms, winds, rolling stones, floods and avalanches ,

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel ,

(iii) for the maintenance of a water-supply in springs, rivers and tanks ,

(iv) for the protection of roads, bridges, railways and other lines of communication ,

(v) for the preservation of the public health

(2) The [Provincial Government]* may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the [Provincial Government] *

Notes — 'In order to preclude hardship to the owners of private forest from the operation of Chapter V we have enabled such owners to require the Government to acquire the same land for public purposes — *Report of the Select Committee*

36 (1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the [Provincial Government]* may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land

(2) The net profits, if any arising from the management of such forest or land shall be paid to the said owner

Notes — Under this section in the case of contingency mentioned herein the management only of forests vests in a Forest officer. The owner however is entitled to the net profit, if any arising from the management of such forest or land

37 (1) In any case under this Chapter in which the [Provincial Government]* considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the [Provincial Government]* may proceed

* The words within brackets have been substituted by G. I. Order of 1937

to acquire it in the manner provided by the Land Acquisition Act, 1894*.

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof require that such forest or land shall be acquired for public purposes, and the [Provincial Government]† shall acquire such forest or land accordingly

forest under
prised in any
ent to acquire
t be exercised

38 (1) The owner of any land or, if there be more than one owner thereof the owners of shares therein amounting in the aggregate to at least two thirds thereof may, with a view to the formation or conservation of forests thereon represent in writing to the Collector their desire—

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon, or

(b) that all or any of the provisions of this Act be applied to such land

(2) In either case the [Provincial Government]† may, by notification in the [official Gazette]†, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants

Notes — We have added a section 38 to enable Government at the request of owners

estates and other private property in many parts of India — *Report of the Select Committee*

CHAPTER VI

OF THE DUTY ON TIMBER AND OTHER FOREST PRODUCE.

39 (1) The [Central Government]† may levy a duty in such manner at such places and at such rates as it may declare by notification in the [official Gazette]† on all timber or other forest produce —

(a) which is produced in British India, and in respect of which [the Crown]† has any right

(b) which is brought from any place outside British India ‡

* I of 1894

† The words within brackets have been substituted by G I Order of 1937

‡ The proviso after this repealed by G I Order of 1927 has been omitted

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within [the Province], *

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass,

(c) provide for the issue, production and return of such passes and for the payment of fees therefor,

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to [the Crown]* on account of the price thereof or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark,

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots,

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce and the throwing of grass, brush-wood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed,

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same,

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber,

(i) regulate the use of property marks for timber, and the registration of such marks prescribe the time for which such registration shall hold good limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration

(3) The [Provincial Government]* may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area

Notes.—The words timber and forest produce in section 41 are used in the widest sense and not narrow and restricted as described in Chapter 7 Lal Cas 90 Timber and other as described in s 39 76 Ind C

(2) In every case in which such duty is directed to be levied *ad valorem*, the [Provincial Government]* may fix by like notification the value on which such duty shall be assessed

(3) All duties on timber or other forest-produce which at the time when this Act comes into force in any territory, are levied thereon under the authority of the [Provincial Government],* shall be deemed to be and to have been duly levied under the provisions of this Act

†[(4) Until provision to the contrary is made by the Central Legislature, any Provincial Government which was, immediately before the commencement of Part III of the Government of India Act, 1935 levying a duty on any timber or other forest produce produced in that Province may continue to levy that duty on such timber or forest-produce

Provided that nothing in this subsection authorises the levy of any duty which as between timber on other forest produce of the Province and similar produce of the locality outside the Province, discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the Province, discriminates between timber or other forest produce of one locality and similar timber or other forest produce of another locality]

Notes — We have restricted the power of levying a duty on timber produced in British India. The holder of land in British India will thus not be liable for a duty on timber existing which are

Clause (2) — The duty is to be levied on timber produced in British India and thus it would be a session and which India is levied on the bringing of that timber to the place of export. It is not liable in British India.

40 Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied

CHAPTER VII

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT

41 (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the [Provincial Government]*, and it may make rules to regulate the transit of all timber and other forest-produce.

* Substituted by G. I. Order of 1937.

† Inserted by G. I. Order of 1937.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within [the Province],*

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass,

(c) provide for the issue, production and return of such passes and for the payment of fees therefor,

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to [the Crown]* on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark,

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots,

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brush-wood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed,

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same,

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber,

(i) regulate the use of property marks for timber, and the registration of such marks prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration

(3) The [Provincial Government]* may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce or to any specified local area

Notes.—The words 'timber' and 'forest produce' in section 41 are used in the widest sense and not narrow and restricted as described in Chapter 7 *Lal Cas 790* Timber and other is described in s 39 76 *Lal Cas*

framed under the Forest Act. It was not proved that the second accused was guilty because there was nothing to show that the quantity and description of the wood carried in the passes exceeded the quantity and description of the wood which he had nothing to do with. *Born L R 971=A I* 84 I C 250

rules 57 Ind Cas 819=21 Cr L J 659

Rule 4 cl (a) of the rules made under s 41 of the Forest Act is ultra vires. Hence the prohibition of the sale of timber from private land is not a proper prohibition. The prohibition is being issued by private land owners. 10 S L R 9=17 Cr L J 361=35 Ind Cas 668. A person though convicted for breach of rule (4) made under section 41 (c) of the Forest Act, 1878, by trial and lower appellate Courts was acquitted in revision on the wrong interpretation of the words 'timber' and 'forest produce'. *Ind Cas 668*. Again the same decision of the A I R 1923

(Lah) 60

*[41A Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from British India across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section]

42 (1) The [Provincial Government]† may be such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence

* S 41A has been inserted by G I Order of 1937.

† Substituted by G I. Order of 1937

N-12, The Act of 1927, Chapter XVI of the Indian Forest Act, 1927, is hereby repealed.

43 The [Crown]* shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently

[Crown]* and Forest-officers not liable for damage to forest produce at depot

Notes —Under this section the liability of the Forest officer for loss or damage of forest produce is only confined to cases of damage caused by negligence malice or fraud

44 In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the [Crown]* or by any private person, shall render assistance to any Forest officer or Police officer demanding his aid in averting such danger or securing such property from damage or loss

All persons bound to aid in case of accident at depot

CHAPTER VIII

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

45 (1) All timber found adrift, breached, stranded or sunk all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise and

if such areas as the [Provincial Government]* directs, all unmarked wood and timber, shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber

(3) The [Provincial Government]* may, by notification in the [official Gazette] * exempt any class of timber from the provisions of this section

Notes —In section 45 we have empowered the Local Government to exempt any parti

was found in possession was timber that has gone below the catching places, that is to say, drift or stranded timber. Though the possession of the unmarked timber within the area specified by the Local Government under section 45 may be sufficient to establish that the timber was the property of the Government person under section 51 13 P R 1883 Cr not the effect of taking away from private own to drift and stranded timber which such owners possessed before and at the time of passing of the Act, except in so far as these rights might be affected by the failure to prefer their claims. The object of the Act is regulation and not confiscation. The title to collect "drift and stranded timber" given to the Government by the Act is coupled with and dependent upon, the duty of giving notice to the public in order that the true owner, whether he be a person from whom it has escaped or the owner of a *julkur*, or however he may be entitled, may claim such timber in the manner and within the time prescribed by the Act. In cases where the Government neglects to follow the procedure prescribed by the Act, and treats the timber as its own property, it, in the event of its being found that the property does not belong to it, is in no better position than an *off-trespasser*. The Act calls for a notice of ownership of the

46 Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47 (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) if such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deemed entitled thereto, or may refer the claimants to the Civil Court, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall recover any compensation or costs against the [Crown],* or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48 If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to

* Substituted by G. I. Order of 1937.

recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances not created by him

49 The [Crown]* shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45 and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently

[Crown]* and its officers not liable for damage to such timber

50 No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51

Payment to be made by claimant before timber is delivered to him

Power to make rules and prescribe penalties

51 (1) The [Provincial Government]* may make rules to regulate the following matters namely —

(a) the salving, collection and disposal of all timber mentioned in section 45,

(b) the use and registration of boats used in salving and collecting timber,

(c) the amounts to be paid for salving collecting, moving, storing or disposing of such timber, and

(d) the use and registration of hammers and other instruments to be used for marking such timber

(2) The [Provincial Government]* may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months or fine which may extend to five hundred rupees, or both

Notes — Before a person can be legally convicted of a breach of the rules framed under this section it must be shown that the timber of which he was found in possession was timber that has gone below the catching places that is to say drift or stranded timber 13 I C 1883 Cr 1 Held that the petitioner's conviction under s 51 of Act VII of 1878 for being in possession of beams

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CHAPTER IX

PENALTIES AND PROCEDURE

52 (1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer

Seizure of property liable to confiscation

* Substituted by G I Order of 1937

N B—This section corresponds to s 55 of the old Act

Notes—Where certain persons were convicted of a forest offence under s 32 of Act VII of 1878 with respect to certain timber or forest produce which was not wholly Government property and where the timber or forest produce with reference to which the offence was committed was ordered to be confiscated and sold and the sale proceeds credited to the Government. *Held* that the order s 54 of the Forest Act of 1878 that under s 5 Government in the Forest Department and that over the timber or forest produce in specie to the P L R 1912=13 Cr L J 172=13 Ind Cas 921. Under this section the property regarding which an offence has been committed should be awarded to the Government s Bom L R 121. When the property belongs to the Government it should be taken charge of by the Forest officer. Rat Un Cr C 361

57 When the offender is not known or cannot be found the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same :

Procedure when offender not known or cannot be found

Provided that no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person if any, claiming any right thereto and the evidence, if any, which he may produce in support of his claim

N B—This section corresponds to section 56 of the old Act

Notes—It is clear from this section that forfeiture was not a consequence of a forest offence where a good title has vested in a third person. 2 Bom L R 675

58 The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay and may deal with the proceeds as he would have dealt with such property if it had not been sold

Procedure as to perishable property seized under section 52

59 The officer who made the seizure under section 52 or any of his official superiors or any person claiming to be interested in the property so seized may, within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable and the order passed on such appeal shall be final

Appeal from orders under section 52 section 56 or section 57

N B—This section corresponds to section 58 of the old Act

Notes—The terms of section 58 of the Forest Act do not exclude the ordinary revisional powers of the High Court over a subordinate tribunal in the exercise of its criminal jurisdiction where 1892 93 Under s 59 even a original Court and whose entitled to prefer an appeal property so seized in s 50 section 57. And the words C L J 171=126 Ind Cas 760 A I R 1930 Cal 5 7

60 When an order for the confiscation of any property has been passed under section 55 or section 57, the case may be and the period section 59 for an appeal from such has elapsed, and no such appeal has been preferred or when,

Property when to vest in Government

an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances

61 Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the [Provincial Government]* from directing at any time the immediate release of any property seized under section 52

62 Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both

63 Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code†

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person, or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer, or

(c) alters, moves, destroys or defaces any boundary mark of any forest or waste-land to which the provisions of this Act are applied shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both

64. (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards

(2) Every officer making an arrest under this section shall without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police-station

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30

N B — This section corresponds to section 63 of the old Act

Notes — A Police-officer may arrest without a warrant Rat Un Cr C 605 Under this section a Forest officer cannot arrest without a warrant, persons committing an offence under section 30 and his custody is not a lawful custody under this section within the meaning of section 225 of the Penal Code A I R 1927 Cal 516

* Substituted by G I Order of 1937

† XLV of 1960

65 Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his execution of a bond to appear, if and when so required before the Magistrate or before the officer in charge of the

Power to prevent commission of offence

66 Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing the commission

of any forest-offence

Notes—In *anandar*, the owner of a forest obtained in October, 1891 a book of passes authorizing him to issue the same for the transit of forest produce belonging to himself. Between October 1891 and March 1892, he issued 50 of those passes conveying forest produce exceeding altogether 10 Khandis of those, about one khandi may have belonged to the *anandar* and the rest it was presumed belonged to Government, but it could not be made out what particular pass or passes covered the produce belonging to the *anandar*. Held that he cannot be convicted under rule 256 framed under s 41 Rat Un Cr C 659

67. The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the [Provincial Government]* may try summarily, under the Code of Criminal Procedure, 1898†, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both

Power to compound offences
68 (1) The [Provincial Government]* may, by notification in the [official Gazette],* empower a Forest-officer—

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released and no further proceedings shall be taken against such person or property

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees

* Substituted by G. I. Order of 1937

† V of 1898

Notes—By this section the Legislature has restricted the power of Forest officers as regards compounding to the receipt of compensation for damage committed—*States of Objects and Persons*. Such officer in sub-section (2) means an officer empowered by the Regulation 591 of 1892. Cases of timber come within these provisions of the Act 59 C 21.

69 When in any proceedings taken under this Act or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government such produce shall be presumed to be the property of the Government until the contrary is proved.

B—This section corresponds to s. 68 of the old Act.

CHAPTER X.

CATTLE TRESPASSES.

70 Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle trespass Act, 1871^{*}, and may be seized and impounded as such by any Forest-officer or Police officer.

Notes—If the cattle were found straying in a reserved forest the seizure of the same would be legal even if no damage had actually been done in as much as section 69 of the Forest Act makes s. 11 of the Cattle trespass Act applicable to forests. ¹⁹³³ B 933.

71 The [Provincial Government][†] may, by notification in the [official Gazette][†], direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act 1871,^{*} there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding the following that is to say—

1 for each elephant	12 rupees
1 for each buffalo or camel	two rupees
1 for each goat or sheep	one rupee
1 for each pig	eight annas

CHAPTER XI

OF FOREST-OFFICERS.

72 (1) The [Provincial Government][†] may invest any Forest-officer with all or any of the following powers, that is to say—

(a) power to enter upon any land and to survey, demarcate and make a map of the same,

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects,

(c) power to issue a search warrant under the Code of Criminal Procedure, 1898,* and

(d) power to hold an inquiry into forest offences, and, in the course of such inquiry to receive and record evidence

(2) Any evidence recorded under clause (d) of sub section (1) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person

Forest officers deemed public servants

73. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code †

Indemnity for acts done in good faith

74 No suit shall lie against any public servant for anything done by him in good faith under this Act

Notes. As the Act is intended to be applied to the forest and detained timber from the forest is the commission of a

75 Except with the permission in writing of the [Provincial Government]‡ no Forest-officer shall as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forests or in any contract for working any forest, whether in or outside British India

CHAPTER XII

SUBSIDIARY RULES

Additional powers to make rules

76 The [Provincial Government] ‡ may make rules—

(a) to prescribe and limit the powers and duties of any Forest-officer under this Act,

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act,

(c) for the preservation reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons, and

(d) generally, to carry out the provisions of this Act

Notes.—By this section the Legislature has empowered the Local Government to make rules regarding the rewards to be paid to officers and informers out of the proceeds of fines and confiscations and for the preservation reproduction and disposal of trees and timber belonging to Government but grown on lands belonging to or in the occupation of private persons—*Report of the Select Committee on the previous Act*

AND OUDH LIST OF FOREST IN CHARGE IS LUG 1894 AND ALSO NORTH WESTERN PROVINCES AND OUDH Gazette, 1899 Pt I pp 494, Ibid 1900 Pt I p 491 (4) Punjab see the Punjab Gazette, 1891 Pt I p 748

* V of 1898

† XLV of 1860

‡ Substituted by G I Order of 1937

The offence under s 75 of the Forest Act of 1878 by the Bombay Government by which a person who has made a written tender for a contract to the forest department is prohibited from withdrawing the tender is not ultra vires though under s 20 of the Contract Act an agreement without consideration is declared to be void and under s 5 of the Contract Act a person who makes a proposal is declared entitled to withdraw it before it is accepted 27 Bom L R 93=49 B 750=89 Ind Cas 498=A I R 1925 Bom 485 (F B) Sandal wood trees on occupancy land grown after survey settlement belongs to the tenants 45 Bom 110=59 Ind Cas 60=22 Bom L R 884

Under rule (1) it is not competent to a Magistrate to order a person to be removed from a forest. Under rule (1) it is not competent to a Magistrate to order a person to be removed from a forest.

of the convicting Court Rat Un Cr C 622 Rule framed under s 75 (2) of the Forest Act of 1878 by the Bombay Government by which a person who has made a written tender for a contract to the forest department is prohibited from withdrawing the tender is not ultra vires though under s 20 of the Contract Act an agreement without consideration is declared to be void and under s 5 of the Contract Act a person who makes a proposal is declared entitled to withdraw it before it is accepted 27 Bom L R 93=49 B 750=89 Ind Cas 498=A I R 1925 Bom 485 (F B) Sandal wood trees on occupancy land grown after survey settlement belongs to the tenants 45 Bom 110=59 Ind Cas 60=22 Bom L R 884

77 Any person contravening any rule under this Act for the

Penalties for breach of rules contravention of which no special penalty is provided shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees or both

Notes—The Court before which the offence is tried shall have no more weight with the Judge of the Forest. The accused is liable to be punished for the offence.

18 All rules made by the [Provincial Government]* under this Act shall be published in the [official Gazette]† and shall thereupon so far as they are consistent with this Act, have effect as if enacted therein

Rules when to have force of law

CHAPTER XIII

MISCELLANEOUS

79 (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce from or to cut and remove timber or to pasture cattle in such forest, and every person who is employed by any such person in such forest and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the [Crown]* for services to be performed to the community

shall be bound to furnish without unnecessary delay to the nearest Forest officer or Police officer any information he may possess respecting the commission of, or intention to commit any forest offence and shall forthwith take steps, whether so required by any forest-officer or Police officer or not,—

(a) to extinguish any forest fire in such forest of which he has knowledge or information,

* Substituted by G I Order of 1937

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

and shall assist any Forest-officer or Police-officer demanding his aid—
(c) in preventing the commission in such forest of any forest-offence, and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

(a) to furnish without unnecessary delay to the nearest Forest-officer or Police officer any information required by sub-section (1),

(b) to take steps as required by sub-section (1) to extinguish any forest fire in a reserved or protected forest,

(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest, or

(d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both

N B —This section corresponds to section 78 of the old Act

A *malguzar* can make an enquiry into the matter of damage done to the Government forest. 9 Ind Cas 669=12 Cr L J 112

Management of forests the joint property of Government and other persons

80 (1) If the Government and any person be jointly interested in any forest or waste land, or in the whole or any part of the produce thereof, the [Provincial Government]* may either—

(a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same, or

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the [Provincial Government]* undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the [official Gazette]*, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly

* Substituted by G I Order of 1937

81 If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the [Provincial Government]* that such service is no longer so performed

Failure to perform service for which a share in produce of Government forest is enjoyed

*Provided that no such share shall be confiscated until the person entitled thereto and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the [Provincial Government]**

Notes — We have inserted a new section to enable the Government to enforce service in cases where persons are entitled to a share in the produce of forests on the condition of duly performing service in connection with such forests' — *Report of the Select Committee to frame Act VII of 1878*

82 All money payable to the Government under this Act or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue

83 (1) When any such money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount

(3) The surplus if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to His Majesty

N B — This section corresponds to section 82 of the old Act

Notes — ... and where d and treated in the contract full Held Held also that case Section 81 confiscation of the defendant sought to raise for the first 31 Ind Cas 436 d no jurisdiction 78 (= this section) which officer is not 15 Dom L R

Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act 1894

84 Whenever it appears to the [Provincial Government] * that any land is required for any of the purposes of this Act such land shall be deemed to be needed for a public purpose within the meaning

of section 4 of the Land Acquisition Act, 1894†

Notes —Tide Notes under section 11 (*supra*)

85 When any person in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872‡ be recovered from him in case of such breach as if it were an arrear of land-revenue

N B —This section corresponds to section 84 of the old Act

Notes —This section does not apply generally to the consequences of breach on the part of the contractor but only to a particular penalty provided for a breach of the condition as to the contractor performing any duty or act or abstaining from a particular act 49 B 194=27 Bom L R 66=86 Ind Cas 87=A I R 1925 Bom 227

§[85A As from the commencement of Part III of the Government of India Act, 1935, nothing in this Act shall authorise any Provincial Government to make any order or do any other thing in relation to any Crown property not vested in His Majesty for the purposes of that Province or otherwise to prejudice any Crown rights, without the consent of the Government or authority concerned]

86 The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof

Repeals

THE SCHEDULE

(See section 86)

ENACTMENTS REPEALED

Year	No	Short title,	Extent of repeal
1	2	3	4
1878	VII	The Indian Forest Act 1878	So much as has not already been repealed
1890	V	The Forest Act 1890	Ditto
1891	XII	The Amending Act 1891	So much of Part I of Schedule II as relates to the Indian Forest Act 1878
1901	V	The Indian Forest (Amendment) Act 1901	So much as has not already been repealed
1911	XV	The Indian Forest (Amendment) Act, 1911	Ditto

* Substituted by G I Order of 1937

† 1 of 1894

‡ IX of 1872

§ Inserted by G I Order of 1937.

ENACTMENTS REPEALED—*old*

Year	No	Short title	Extent of repeal
1	2	3	4
1914	X	The Repealing and Amending Act, 1914	So much of the Second Schedule as relates to the Indian Forest Act 1878 the Forest Act 1890 and the Indian Forest (Amendment) Act 1901
1918	I	The Indian Forest (Amendment) Act, 1918	The whole
1920	XXXV III	The Devolution Act, 1920	So much of Schedule I, Part I as relates to the Indian Forest Act 1878

THE FORFEITURE ACT (IX OF 1859.)

CONTENTS

PREAMBLE

SECTIONS.

[1—15 —*Repealed*]

- 16 Convictions involving forfeiture not questionable in suits relating to forfeited property
- 17 Conviction not questionable because capacity of convicting officers not shown

SECTIONS

- 18 Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year etc Exemption of pardoned persons
- 19 [*Repealed*]
- 20 Rights of parties not charged with offence involving forfeiture Proviso

THE FORFEITURE ACT, 1859

ACT NO IX OF 1859.*

(Received the assent of the Governor-General on the 30th April, 1859)

An Act to provide for the adjudication of claims to property seized as forfeited

WHEREAS it is expedient† to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons, It is enacted as follows —

1 to 15 — [*Repealed by Act VIII of 1868*]

* The object of the unropealed parts of this Act is stated to be "to give validity to certain forfeitures or seizures of property which have been or are liable to be called in question on the ground of some irregularity of procedure or defect or informality in recording the conviction of the parties whose property has been forfeited or seized or of the absence of a formal adjudication of forfeiture as required by Act XXV of 1857" — *Statement of Objects and Reasons para 1* This Act was declared to be in force throughout British India except as regards the Scheduled Districts Act 15 of 1874, s 3 — in British Baluchistan (except the last para of s 18) Reg 2 of 1913, s 3 in Upper Burma (except the Shan States), Act 13 of 1893, s 4

† Certain words repealed by Act XII of 1891, Sch I, have here been omitted

*[16 Whenever any person shall have been convicted of an offence for which his property was forfeited to Government no Court has power in any suit or proceeding relating to such property to question the validity of the

Convictions involving forfeiture not questionable in suits relating to forfeited property

conviction]

*[17 Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in

Conviction not questionable because capacity of convicting officer not shown

what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict

*[18 Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which upon conviction the property of

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year &c

the offender would be forfeited the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall within one year after the seizure of his property have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice

Nothing in this section shall extend to persons entitled to pardon

Exemption of pardoned persons

upon Her Majesty's proclamation published in the *Calcutta Gazette Extraordinary*, dated the 1st of November 1858, or to any person who having surrendered himself within the period of one year after the seizure of his property, shall be [duly discharged]† without a prosecution

19 [Release of property attached as forfeited]—*Repealed by Act VIII of 1868*

*[20 Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited in respect of any

Rights of parties not charged with offence involving forfeiture

property attached or seized as forfeited or liable to be forfeited to Government Provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates]

PROVISO

THE FUGITIVE OFFENDERS ACT - 32-

1. $\frac{1}{2} + \frac{1}{2} = 1$ C 24

CONCLUSIONS

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3

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7 77

INDEX DE TITRES

- I have been thinking about you a lot lately and wondering how you are getting on. I hope you are well and happy. I am still working hard at my job, but I always find time to think of my friends.
- I would love to hear from you soon. Please write back when you have a chance. I am looking forward to hearing all the news.
- Your friend,
John Doe

RESULTS

SECRETARY OF THE ARMY
WASHINGTON, D. C.

— 22 —

1. The purpose of this report is to provide information on the activities of the [redacted] during the period [redacted] to [redacted].
2. The [redacted] was established on [redacted] and is located at [redacted].
3. The [redacted] is a [redacted] organization and is [redacted] to [redacted].
4. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
5. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
6. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
7. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
8. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
9. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].
10. The [redacted] is [redacted] to [redacted] and is [redacted] to [redacted].

SYNOPSIS

RESULTS

Abstract

17. IF THIS DOCUMENT IS DESTROYED IN
18. THE NATIONAL ARCHIVES, THE SECRETARY
19. OF THE ARMY SHALL BE RESPONSIBLE FOR
20. THE REPRODUCTION OF THE SAME.
21. THIS DOCUMENT IS THE PROPERTY OF
22. THE ARMY AND IS TO BE KEPT IN
23. THE ARMY ARCHIVES.
24. IT IS TO BE KEPT IN THE ARMY
25. ARCHIVES FOR THE USE OF THE ARMY.
26. IT IS TO BE KEPT IN THE ARMY
27. ARCHIVES FOR THE USE OF THE ARMY.

EXERCISE IV

1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

THESE

- [illegible]

2. Factors

1. Importance of the study of the history of the United States
2. The role of the American people in the development of the country
3. The influence of the American government on the world
4. The impact of the American culture on the world

— 2 —

1. The United States is a free country and as
such it is bound to support the rights of all
people to self-determination.
2. The United States is a free country and as
such it is bound to support the rights of all
people to self-determination.
3. The United States is a free country and as
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8. The United States is a free country and as
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people to self-determination.
9. The United States is a free country and as
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people to self-determination.
10. The United States is a free country and as
such it is bound to support the rights of all
people to self-determination.

THE FUGITIVE OFFENDERS ACT, 1881

(44 & 45 VICT., C. 69)

An Act to amend the law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other purposes connected with the Trial of Offenders

[27th August, 1881]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say) —

Short title

1 This Act may be cited as the Fugitive Offenders Act, 1881

PART I

RETURN OF FUGITIVES

2 Where a person accused of having committed an offence (to which this part of this Act applies) in one part of Her Majesty's dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions shall be liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive

A fugitive may be so apprehended under an endorsed warrant or a provisional warrant

3 Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is supposed to be, (that is to say) :—

- (1) a Judge of a superior Court in such part,
- (2) in the United Kingdom a Secretary of Magistrates of the metropolitan Police-court in London,
- (3) in a British possession the Governor satisfied that the warrant was issued by some authority to issue the same, may endorse such warrant and the warrant so endorsed may be used by the authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him back to the part from which he is a fugitive

4 A Magistrate of any part of Her Majesty's dominions may issue a provisional warrant for the apprehension of a fugitive from that part, in or on his way to which the fugitive is or is supposed to be, (that is to say) :—

Provisional warrant for apprehension of fugitive

mation, and under such circumstances, as may be

the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly

A Magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State and if he is in a British possession to the Governor of that possession and the Secretary of State or Governor may, if he thinks fit, discharge the person apprehended under such warrant.

5 A fugitive when apprehended shall be brought before a Magistrate (who subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the Magistrate, raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the Magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to a Secretary of State and if in a British possession to the Governor of that possession

Where the Magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*, or other like process

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant

6 Upon the expiration of fifteen days after a fugitive has been committed to prison to await his return, or if a writ of *habeas corpus* or other like process is issued with reference to such fugitive by a superior Court, after the final decision of the Court in the case

(1) if the fugitive is so committed in the United Kingdom a Secretary of State, and

(2) if the fugitive is so committed in a British possession, the Governor of that possession, may, if he thinks it just by warrant under his hand order that fugitive to be returned to the part of His Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and

such warrant shall be forthwith executed according to the tenor thereof

The Governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant and on payment of tender of a reasonable amount for expenses shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purposes of the proper execution of the warrant

7 If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's dominions to await his return is not conveyed out of that part within one month, after such committal, a superior Court, upon application by or upon proof that reasonable notice of the committal has been given, if the said part is a British possession to the Secretary of State, and if the said part is a British possession to the Governor of the possession, may, unless sufficient cause is shown to the contrary order the fugitive to be discharged out of custody

8 Where a person accused of an offence and returned in pursuance of this part of this Act or any part of Her Majesty's dominions, either is not prosecuted for the said offence within six months after his arrival in that part, or is acquitted of the said offence then if that part is the United Kingdom a Secretary of State and if that part is a British possession the Governor of that possession may if he thinks fit, on the request of such person cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended

9 This part of this Act shall apply to the following offences, namely, to treason and piracy, and to every offence, whether called felony misdemeanor, crime or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment, and for the purposes of this section, rigorous imprisonment and any confinement in a prison combined with labour by whatever name it is called shall be deemed to be imprisonment with hard labour

This part of this Act shall apply to an offence notwithstanding that by the way to which offence, or not all the provisions provisional wa if the offence

10 Where it is made to appear to a superior Court that by reason of the trivial nature of the case or by reason of the application for the return of a fugitive not being made in good faith in the interest of justice or otherwise, it would, having regard to the distances to the facilities for communication and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such Court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the Court seems just

11 In Ireland the Lord Lieutenant,* also the Chief Secretary* may as well as a Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

Power of superior Court to discharge fugitive when case frivolous or returns unjust

Powers of Lord Lieutenant in Ireland

PART II

INTER COLONIAL BACKING OF WARRANTS AND OFFENCES

Application of Part of Act

12 This part of this Act shall apply only to those groups of British possessions on which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same

Application of part of Act to group of British possessions

It shall be lawful, for Her Majesty from time to time by order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the order, and by the same or any subsequent order to accept certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions and qualifications as may be deemed expedient.

Backing of Warrants

13 Where in a British possession of a group to which this part of this Act applies a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group a Magistrate in the last-mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing Magistrate, the person named in the warrant, and bring him

Backing in one British possession of warrant issued in another of same group

* Words repealed in (U.K.) by 57 & 58 Vict. c. 50 (S.L.R.) have been omitted

before the endorsing Magistrate or some other Magistrate in the same British possession

14 The Magistrate before whom a person so apprehended is brought, if he is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue the same and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant may order such prisoner to be returned to the British possession in which the warrant was issued and for that purpose to be delivered into the custody of the persons to whom the warrant is addressed or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by a warrant under the hand of the Magistrate making it and may be executed according to the tenor thereof.

A Magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner as he has in the case of a person apprehended under a warrant issued by him

15 Where a person required to give evidence on behalf of the prosecutor or defendant of a charge for an offence punishable by law in a British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a Judge, Magistrate or other officer who would have lawful authority to issue a summons requiring the attendance of such witness, if the witness were within his jurisdiction may issue a summons for the attendance of such witness, and a Magistrate in any other British possession of the same group if satisfied that the summons was issued by some Judge, Magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name, and the witness on and on payment shall obey the summons. The expression "summons" in this section includes any subpoena or other process for requiring the attendance of a witness

16 A Magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence which such person is accused were an offence punishable by the law of the said possession, and had been committed within his

and such warrant may be backed and executed accordingly provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may under the circumstances seem requisite

17 If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return a Magistrate or a superior Court upon application by or on behalf of the prisoner and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the Police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody

Any order or refusal to make an order of discharge by a Magistrate under this section shall be subject to appeal to a superior Court

18 Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the Governor of that possession if he thinks fit may, on the requisition of such person, cause him to be sent back, free of cost and with as little delay as possible to the British possession in or on his way to which he was apprehended

19 Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a Magistrate or to a superior Court that by reason of the trivial nature of the case or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise it would, having regard to the distance, to the facilities of communication and to all the circumstances of the case be unjust or oppressive, or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the Court or Magistrate may discharge the prisoner either absolutely or on bail or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the Magistrate or Court seems just

Any order or refusal to make an order of discharge by a Magistrate under this section shall be subject to an appeal to a superior Court

Notes—Magistrates to whom prisoners are brought under s 14 are not entitled to return a prisoner who was or was if the case appears on a file, not made Ind 144 Ind Cas. R 1933 Mad 503—
 a return is sought 27 M 209—66 M

is merely an order under s

M L J 353=A. I R 1931 M&L 17=1993 M W N 1191-3 Cr I J 511-147 Ind Cas 929 In an Appeal under s 10 the appellate Court has power to direct the taking of additional evidence. The Act does not define the powers which an appellate Court may exercise in this behalf and so it may be inferred that it may act in accordance with the normal practice which is governed in the exercise of its appellate criminal jurisdiction by *Had*

PART III

TRIAL ETC OF OFFENDERS

20 Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possession may be apprehended, tried, and punished in either of such possessions

21 Where an offence is committed on any person or in respect of any property in or upon any carriage, cart or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed, and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject, where it is not shown that the offence was committed in a British possession

22 A person accused of the offence (under whatever name it is known) of swearing or making any false deposition or of giving or fabricating any false evidence for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated as the justice of the case may require

23 Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the trial of such person, and of and

preliminary, incidental to incidental to the jurisdiction of any Court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it, and such

may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874 *

24 Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every Court and Magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person or otherwise to be the subject of such offence, as that Court or Magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained or the offence had been committed wholly within the jurisdiction of such Court or Magistrate

25 Where a person is in legal custody in a British possession either in pursuance of this Act or otherwise and such person is required to be removed in custody to another place in or from one place to another belonging to the same British possession, such person if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed, and the provisions of this Act with respect to the re-taking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty or the offence of escaping or attempting to escape, or aiding or attempting to aid prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act

PART IV.

SUPPLEMENTAL

Warrants and Escape

26 An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same and shall authorise all or any of the persons named in the warrant was originally issued to whom the warrant within the place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it and bringing him before some Magistrate in the same part or place whether the Magistrate named in the endorsement or some other

For the purposes of this Act every warrant, summons, subpoena and process and every endorsement made in pursuance of this Act

thereon shall remain in force notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office

27 Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part I or Part II of this Act such fugitive or prisoner may be sent either in any ship belonging to Her Majesty or to any of her subjects

For the purpose aforesaid the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody and to the witnesses so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage or more than one witness for every fifty tons of such tonnage

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require

Every such master shall on ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner if he is not in the custody of any person to be given into the custody of some constable, there to be dealt with according to law

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section shall be liable on summary conviction to a fine not exceeding fifty pounds which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854,* and the Acts amending the same

28 If a prisoner escapes by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be re taken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be re taken upon an escape

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape by breach of prison or otherwise from custody under any warrant issued or endorsed in pursuance of this Act may be tried in any of the following parts of Her Majesty's dominions, namely the part to which and the part from which the prisoner is being removed and the part in which the prisoner escapes and the part in which the offender is found

* See now the Merchant Shipping Act 1891 (57 & 58 Vict. c. 60)

may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874 *

24 Where a warrant for the apprehension of a person accused

Issue of search warrant of an offence has been endorsed in pursuance of any part of this Act in any part of

Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every Court and Magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person or otherwise to be the subject of such offence, as that Court or Magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed wholly within the jurisdiction of such Court or Magistrate

25 Where a person is in legal custody in a British possession

Removal of prisoner by sea either in pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or from one place to another

belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed, and the provisions of this Act with respect to the re-taking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty or the offence of escaping or attempting to escape, or aiding or attempting to aid prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act

PART IV.

SUPPLEMENTAL

Warrants and Escape

26 An endorsement of a warrant in pursuance of this Act shall

Endorsement of warrant be signed by the authority endorsing the same and shall authorise all or any of the

persons named in the endorsement and of the persons to whom the warrant was originally directed, and also every constable to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some Magistrate in the same part or place whether the Magistrate named in the endorsement or some other

For the purposes of this Act every warrant, summons, subpoena and process and every endorsement made in pursuance of this Act

thereon, shall remain in force notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office

27 Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part I or Part II of this Act such fugitive or prisoner may be sent either in any ship belonging to Her Majesty or to any of her subjects

For the purpose aforesaid the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody and to the witness, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage or more than one witness for every fifty tons of such tonnage

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require

Every such master shall on ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section shall be liable on summary conviction to a fine not exceeding fifty pounds which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854,* and the Acts amending the same

28 If a prisoner escapes by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be re-taken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be re-taken upon an escape

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape by breach of prison or otherwise from custody under any warrant issued or endorsed in pursuance of this Act may be tried in any of the following parts of Her Majesty's dominions, namely the part to which and the part from which the prisoner is being removed and the part in which the prisoner escapes and the part in which the offender is found

* See now the Merchant Shipping Act 1891 (54 & 58 Vict. c. 60)

Evidence

29 A Magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him

Depositions to be evidence and authentication of depositions and warrants

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating fact, may, if duly authenticated, be received in evidence in proceedings under this Act

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a Judge, Magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness or by being sealed with the official seal of a Secretary of State or with the public seal of a British possession, or with the official seal of a Governor of a British possession, or of a colonial secretary or of some secretary or minister administering a department of the Government of a British possession

And all Courts and Magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it

Miscellaneous

Provisions as to exercise of jurisdiction by Magistrates

30 The jurisdiction under Part I of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

(1) in England by a chief Magistrate of the metropolitan Police-court, or one of other Magistrates of the metropolitan Police-court at Bow Street, and

(2) in Scotland, by the sheriff or sheriff's substitute of the county of Edinburgh, and

(3) in Ireland, by one of the Police Magistrates of the Dublin metropolitan police district, and

(4) in a British possession, by any Judge, Justice of the Peace, or other officer having the like jurisdiction as one of the Magistrates of the metropolitan Police-court in Bow Street, or by such other Court, Judge, or Magistrate as may, be from time to time, provided by an Act or ordinance passed by the Legislature of that possession

If a fugitive is apprehended and brought before a Magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that Magistrate shall order the fugitive to be brought

before some a Magistrate having that jurisdiction and such order shall be obeyed

31 It shall be lawful for Her Majesty in Council from time to time to make orders for the purposes of this Act and to revoke and vary any order so made and every order so made shall, while it is in force have the same effect as if it were enacted in this Act

Power as to making and revocation of orders in Council

An order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made, if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament

Power of Legislature of British Possession to pass laws for carrying into effect this Act

32 If the Legislature of a British possession pass any Act or ordinance—

(1) for defining the offences committed in that possession to which this Act or any part thereof is to apply, or

(2) for determining the Court Judge Magistrate officer or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised or

(3) for payment of the costs incurred in returning a fugitive or a prisoner or in sending him back if not prosecuted or if acquitted, or otherwise in the execution of this Act, or

(4) in any manner for the carrying of this Act or any part thereof into effect in that possession

it shall be lawful for Her Majesty by order in Council to direct if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or ordinance or any part thereof shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act

Application of Act

33 Where a person accused of an offence can, by reason of the nature of the offence or of the place in which it was committed or otherwise be under this Act or otherwise tried for or in respect of the offence in more than one part of Her Majesty's dominions a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can if he happens to be there, be tried and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person returned in pursuance of this Act which he is

Application of Act to offences at sea or triable in several parts of Her Majesty's dominions

Provided that if such person is apprehended, a Secretary of State and if he is apprehended in any session may

regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in the part of Her Majesty's dominions in which he is apprehended, and in such a case any warrant previously issued for his return shall not be executed

Notes—The word "return" in s 33 is not to be read as implying that the offender is a fugitive from the country to which he is being sent for trial A. I. R 1928 Sind 161, 103 L. T. 473 (477)=1129 C 673

34 Where a person convicted by a Court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is consistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted

35 Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions in such case a superior Court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession, the Governor of that possession, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly

36 It shall be lawful for Her Majesty from time to time by order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions and qualifications (if any) contained in the order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the order, were a British possession, and to provide for carrying into effect such application

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom, and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions, and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly

38 This Act shall apply where an offence is committed before the commencement of this Act or, in the case of Part Two of this Act, before the application of that Part to a British possession or to the offence in like manner as if such offence had been committed after such commencement or application

Definitions and Repeal

Definition of terms

39 In this Act, unless the context otherwise requires —

Secretary of State

The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State *

The expression "British possession" means any part of Her Majesty's dominions exclusive of the United Kingdom, the Channel Islands and Isle of Man

'British possession' all territories and places within Her Majesty's dominions which are under one Legislature shall be deemed to be one British possession and one part of Her Majesty's dominions :

Legislature

The expression "Legislature" where there are local legislature as well as a central legislature, means the central legislature, only

'Governor

ment of a British possession † The expression "Governor" means any person or persons administering the Govern-

Constable

The expression 'constable' means out of England, any policeman or officer having the like powers and duties as a constable in England

'Magistrate

The expression 'Magistrate' means, except in Scotland, any Justice of the Peace, and in Scotland means a sheriff or sheriff's substitute and in the Channel Islands, Isle of Man and a British possession means any persons having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial

Offence punishable on indictment

The expression "offence punishable on indictment" means, as regards India, an offence punishable on a charge or other

wise

'Oath

The expression "oath" includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and the expression "swear" and other words relating to an oath or swearing shall be construed accordingly :

'Deposition

The expression "deposition" includes any affidavit, affirmation or statement made upon oath as above defined

* The definition of "Secretary of State" was repealed by [U K] by 57 & c 56 (S L R)

† Certain words after this repealed by G I Order of 1937 have been

'Superior Court' The expression 'superior Court' means —

(1) in England Her Majesty's Court of Appeal and High Court* and

(2) in Scotland the High Court of Judiciary and

(3) in Ireland, Her Majesty's Court of Appeal and Her Majesty's High Court* at Dublin and

(4) in a British possession any Court having in that possession the like criminal jurisdiction to that which is vested in the High Court* in England, or such Court or Judge as may be determined by any Act or ordinance of that possession

[40 & 41 Rep as to U K 57 & 58 Vict c 56 (S L R) omitted as being spent]

SCHEDULE

[Rep as to U K 57 & 58 Vict, c 56 (S I R) omitted as being spent]

THE PUBLIC GAMBLING ACT (III OF 1867)

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THE PUBLIC GAMBLING ACT, 1867.†

ACT NO III OF 1867

(Received the G. G.'s assent on the 25th January, 1867)

An Act to provide for the punishment of public gambling and the keeping of common gaming houses in the North Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces and Lower Burma

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories

Preamble

* The words 'of Justice' repealed in U K. by 61 & 62 Vict c 22 (S L R)

† The short title has been given by the Repealing and Amending Act (V of 1897)

respectively, subject to the Governments of the [Provincial Government]* of the United Provinces of Agra and Oudh, of the Presidency of Fort William, of the Punjab, and of the Central Provinces, It is hereby enacted as follows —

Interpretation—This Act is a Penal Act and is such should be strictly interpreted
L B R (1872 1892) 53, L B R (1872 1892), 86 A W N 1890, 226

Interpretation-clause

1 In this Act—†

["Gaming" includes wagering or betting, except wagering or betting upon a horse race, when such wagering or betting takes place ,

(a) on the day on which such race is run, and

(b) in an enclosure which the stewards controlling such race have with the sanction of the [Provincial Government]*, set apart for the purpose, but does not include a lottery ,

"instrument of gaming" includes any article used as a means of appurtenances of, or for the purpose of carrying on or facilitating gaming ,]†

§[Common gaming-house means —

(1) in the case of gaming on the digits of the sale price of any commodity, e g , opium or cotton, or on the digits of papers or bales manipulated from within jars or other receptacles or on the occurrence or non-occurrence of any natural event, e g , rainfall or the quantity of rainfall, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which instruments of gaming are kept or used for such gaming ,

(2) in the case of any other form of gaming, any house, room, tent, walled enclosure, space, vehicle, vessel, or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning and occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place or instrument, or otherwise howsoever ,]

"common gaming house," means any house, walled enclosure, room, or place in which cards, dice tables, or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house enclosure, room, or place, or otherwise howsoever ||

Notes—Gambling is not punishable unless it is carried on in public places 3 N W P 134 14 P R 1896 Cr

Gaming—The Gambling Act does not really define gaming but merely indicates what it is like and excludes wagering or betting on some particular occasion and in particular circumstances and also includes a lottery 33 C W N 310=4 I R 1923 Cal 769

† Commis 12067

P Act I of 1917
in C P r

For the purpose of conviction it is not sufficient to say that an accused used a house for the purpose of gambling. It should be proved that the accused is the owner or occupier or a person having the use of the place alleged to be kept as a gaming house. 30 Cr L 7 557

Profit or gain—When the occupier of a house derives his profit from the game it is a common gaming house. 27 A 567 16 A L J 760 20 A L J 218

After the amendment of the Public Gambling Act by the United Provinces Gambling Act (1 of 1917) the playing of a game of mere skill in a public place is gaming but it is not such gaming as falls within the ambit of the Public Gambling Act. L R 6 All 205 Cr

Lottery tickets—are instruments of gaming. 12 W R Cr 34
Gambling is punishable when carried in a common gaming house, otherwise not. 3 N W P 1

Common gaming houses—are houses etc. in which instruments of gambling are kept or used for the profit or gain of the owner or occupier. 3 N W P 184 27 A 567—2 A L J 414 A I R 1922 All 61 A garden enclosed with a hedge or ditch where gambling takes place cannot be a common gaming house. 1896 Cr see also A W N 1869 162 does not give rise to presumption that the place is a common gaming house. 201 45A 258 Gambling in a private grove frequented by the public is an offence. 20 A L J 80 see also 20 A L J 280 Where the Durwans used their office as a common gaming house such user held that the office was a common gaming house. Ind Cas 568 In the Central Provinces it has been held that a public road is wide enough to include a public road. 1936 Nag 78

Instruments of gaming—Instruments of gaming include articles used as a means of amusement or for the purpose of carrying or facilitating gaming. A I R 1922 All 61 see also A I R 1925 Oudh 674 42 A 470 A I R 1927 All 480, A I R 1923 All 336 A I R 1929 Bom 150

2 'Sections 13 and 17 * of this Act shall extend to the whole of the said territories, and it shall be competent to the [Provincial Government]† whenever [it]* may think fit, to extend by a notification to be published in three successive numbers of the official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway station house and place being not more than three miles distant from any part of such station-house within the territories subject to [its]* Government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town suburb, or station-house and from time to time alter the limits so defined

[Sections 13 and 17 of this Act shall extend to the whole of the said territories, and it shall be competent to the 'Provincial Government †, whenever he may think fit, to extend by notification to be published in the official Gazette, all or any of the remaining sections of this Act to any area within the United Provinces] ‡

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories

Extension—The Act or any of its provisions cannot be extended to a town or place to which the Act does not *ex facto* apply under the terms of this section by mere public

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paragraph (1) of section 2

U P. Act V of 1919 for

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3 Whoever, being the owner or occupier, or having the use of any house, walled enclosure, room or place situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house, and

Penalty for owning or keeping
or having charge of a gaming
house

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming house, and

whoever has the care or management of or in any manner assists in conducting the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid, and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code, for any term not exceeding three months

Alterations in United Provinces—In United Provinces read 'house room tent walled enclosure space vehicle, vessel or place' for the words 'house walled enclosure, room, or place' in sections 3 & 5, 6 and 10 vide s 3 of U P Act I of 1917

Profit—To support a conviction the owner must derive profit 19 P R 1871 Cr, 16 A L J 760

In a case under ss 3 and 4 of the Act the owner of the house should be allowed to prove that the house was not used as a common gaming house L B R (1872 1892) 53 46 P R 1867 Cr G C L R 17 Cr A person accused under s 3 cannot be tried with a person accused under s 4 5 P W R 1910 Cr A sentence of imprisonment and fine under ss 3 and 4 is illegal L B R (1872 1892), 431

In order to support a conviction there must be evidence that instruments of gaming were kept or used L B R (1875 1892) 532

Place—As amended by C P Act III of 1927, the word 'place' in s 3 cannot be construed as to embrace the whole of a public thoroughfare 169 Ind Cas 36=38 Cr L J 631=A I R 1937 Nag 102

Separate convictions—for keeping a common gaming house and gambling in it are illegal L B R (1893 1900), 459

Where instruments of gaming are found the presumption is that the accused is guilty 461 417=22 A L J 219=A I R 1923 All 33

Pound the sides of bullock run in the shape of a semi-circle was raised a low wall of loose bricks and within the shelter of this low brick wall gambling took place The

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L J 872=47 A 405=A I R 1925 All 309 The trial of a person under this section along with a number of other persons under s 4 is not illegal 104 Ind Cas 441=28 Cr L J 825=A I R 1927 Lah 699

4 Whoever is found in any such house, walled enclosure, room or place playing or gaming with cards dice, counters, money, other instruments of gaming or is found there present for the purpose of gaming whether playing for any money, wager, stake or otherwise shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code for any term not exceeding one month,

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming

Alteration in U P —As regards alterations in U P vide Notes under section 3

C (2) that gain of 6 P R

Misjoinder of charges —Persons separately charged under ss 3 and 4 cannot be tried together 5 P W R 1910 Cr =5 Ind Cas 720 but see 14 Cr L J 293

Sentence of fine and imprisonment—Cannot both be imposed upon an accused as

Found —A person seen actually in a gaming house is found in the house 22 P R 1895 Cr When not found conviction is illegal Cr Dig 63 of 1876, 35 P R 1894 Cr

Search —S 103 Cr Pro Code does not apply to searches under the Gambling Act The witnesses need not be residents of the locality and need not even be respectable 169 Ind Cas 42=38 Cr L J 702=A I R 1937 Nag 251

Sections 3 and 4 —A person who is simply caught on one occasion gambling on a public road cannot be said to use the plates a more serious offence than s evidently aimed at the keeper of within the same category 162 Ind

for two months or fine of Rs 200 need to more than one week's imprisonment 385 When a warrant has been issued by issued 29 P R 1881

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alone the presumption referred to in this section can be drawn is a ground for holding substantiate a conviction in the premises at the Code has no application 124 Cr L J 14=71 all festival by way of a the keeper of a gambling 68 Ind Cas 815

A Government office may 19 4 All 215 Where an items of which was the ring; common gaming house

The offences under ss 3 and 4 are different offences and a conviction under both the sections is illegal 81 Ind Cas 186

5 If the Magistrate of a district,* or other officer invested with the full powers of a Magistrate*, or the District Superintendent of Police, upon credible information and after such inquiry as he may think necessary, has reason to believe that any [house, walled enclosure room or place],† is used as a common gaming house

he may either himself enter, or by his warrant authorize any officer of Police, not below such rank as the [Provincial Government]‡ shall appoint in this behalf, to enter with such assistance as may be found necessary, by night or by day and by force, if necessary, any such [house, walled enclosure, room, or place]‡,

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming,

and may seize or authorize such officer to seize all instruments of gaming and all moneys and securities for money and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein,

and may search or authorise such officer to search all parts of the [house walled enclosure, room or place],‡ which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody,

and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search

Legislative alterations—For legislative alterations of this section in U P vide notes under s 3

of execution of warrant to the discretion

Cr (F B) But Police report is not
9 0 Cr L J 625

8 Ind Cas 137 but see 34 A 597

17 A search warrant can be issued only on credible information 19 P R 1871 Cr, 9 P R 1876 Cr J N W P 476

Endorsement—A search warrant may be endorsed by a Police officer to whom it was originally directed to another who is not of a rank below that authorised under the Act to enter and search 30 A 60 but see 22 I R 1895 Cr

Conviction of owner—Even in the absence of legal warrant is valid 22 P R 1895 Cr see also L B R (1893 1900) 321

Used as a common gaming house—Actual user is necessary 19 A L J 691

* Now the District Magistrate or a Magistrate of the first class—see Act V of 1898 s 3

† In U P the words within brackets have been substituted by the following words house room tent, walled enclosure, space vehicle vessel or place, vide U I Act I of 1917

‡ Substituted by G I Order of 1937

The provisions of Ch VII of Criminal Procedure Code are applicable in searches conducted under a warrant issued under this section 68 Ind Cas 845

Where a warrant under this section is properly issued the presumption is that official acts have been properly performed 81 Ind Cas 186

Under this section an Assistant Superintendent of Police has no power to search a place without a warrant 23 A L J 187=86 Ind Cas 832=A I R 1925 All 801=26 Cr L J 896

The power given to Police in the first part of this section to seize instrument etc does not extend to the seizure of money recovered on the search of persons found in the house 96 Ind Cas 503=27 Cr L J 951=A I R 1926 Lah 290

Where the Superintendent of Police issued the had reason to believe etc, the only interpretation the Superintendent of Police had reason to believe formation under s 5 96 Ind Cas 654=27 Cr L

6 When any cards, dice, gaming-tables cloths boards or other instruments of gaming are found in any [house, walled enclosure room or place]* entered or searched under the provisions of the last preceding section, or about the person of any of those who are found

therein it shall be evidence, until the contrary is made to appear that such [house walled enclosure room or place]*, is used as a common gaming house, and that the persons found therein were there present for the purpose of gaming although no play was actually seen by the Magistrate or Police-officer or any of his assistants

Alteration by Legislature —As regards alterations in the United Provinces Vide Notes under section 3

Scope —It is only when the house is searched under the provisions of s 5 that the presumption allowed by s 6 arises L B R (1872 1899) 53

Evidence —The word evidence in this section means proof A W N 1884 286

Presumptions —The word 'presumptions' only arise when search is made under section 5 and a conviction cannot be sustained merely on the strength of such presumption in a case where the search was not duly made C N L R 168 see also A W N 1882 132 L B R (1873 1892) 407 19 A L J 961 A I R 1928 All 20 But the fact of a certain house being a gaming house can be proved *af unde*—1 A L J 116 Before the prosecution can rely on the presumption under s 6 it is absolutely necessary for them to show that the place where the accused is found gambling really is the place named in the search warrant 38 Cr L J 784=A I R 1937 Cal 54 Where packets of playing cards made under this section unless other circum-

r

R 1 11 Nov 1927 97 C L J 50

A I
the I conviction is stated if
tion ordinarily raised under s
the other evidence in the case

40 * 231

Instruments of gaming —Cowries are not ordinarily instruments of gaming 19A 23 A W N 1890 139 G C P L R Cr 17 3 P R 1896 Cr but if they are used in a particular case as instruments of gaming they are instruments of gaming 19A 311 see also 2 G W N 639=90 Ind Cas 713=26 Cr L J 1909

W.---

rant nor pre
y this section
22 The mere
did not con
viction illegal

the prosecution 104 Ind Cas 411= 3 Cr L J 8 5=A I R 1927 Lah 699

* In U P for the words within brackets read the following house room tent walled enclosure space vehicle vessel or place—Vide U P Act I of 1917

7 If any person found in any common gaming house entered by any Magistrate or officer of Police under the provisions of his Act, upon being arrested, by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month

Notes—A private room containing all the paraphernalia of a club and rented by members of only one caste is not *prima facie* a common gaming house even if the members indulge in a game of cards and even if there is certain amount of money at stake upon the issue of game 36 Cr L J 865=A I R 1935 Sind 50

8 On conviction of any person for keeping or using any such common gaming house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled

Notes—Forfeiture of property can be ordered in cases where there is a conviction and is restricted to property belonging to convicted persons 5 P R 1898 Cr Forfeiture of money found on the persons of the gambler is illegal 19 A L J 765

9 It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming house, to prove that any person found playing at any game was playing for any money, wager or stake

10 It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any [house walled enclosure, room, or place],* entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such [house, walled enclosure room, place]*, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such [house, walled enclosure, room or place]* or any part thereof, of any Magistrate, or officer authorised as aforesaid

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or

* In U P for the words within brackets read the following words 'house tent walled enclosure space, vehicle vessel or place', vide U P Act I of 1917

before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid on the ground that his evidence will tend to criminate himself

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code *

Legislative alterations—For legislative alterations of the section in the United

under the provision
A L J 115
conviction of an

11 Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for breach of any of the provisions of this Act relating to gaming and who, upon such examination, shall in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined shall thereupon receive from the said Magistrate a certificate in writing to that effect and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming

Notes—An approver can be acquitted if the condition is satisfied 20 O C 4=18 Cr L J 494=39 Ind Cas 384 see also 42 A 385 A I R 193 Nag 396

12 Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill, wherever played

Act not to apply to certain games

Repealed in U P—Section 12 of the Public Gambling Act has been repealed in U P by the U P Act I of 1917

13 A Police officer may apprehend Gaming and setting birds and animals to fight in public streets without warrant—

any person found [playing for money or other valuable thing with cards dice counters or other instruments of gaming used in playing any game not being a game of mere skill] in any public street, place or thoroughfare situated within the limits aforesaid or

any person setting any birds or animals to fight in any public street place or thoroughfare, situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals

Such person when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment either simple or rigorous for any term not exceeding one calendar month

and such Police-officer may seize all instruments of gaming found in such public place, or on the person of those whom he shall so arrest, and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed

Destruction of instruments of gaming found in public streets

Legislative alterations in U P—For the words within brackets the word gaming has been substituted in the United Provinces Vide U P Act I of 1917 s 5

Public place—Signifies a place where the public resorts as a matter of fact whether or

J 917 A I R 1927 Nag 123

202 18 N L J 336 A canal bank

3 Loh L J 53 As regards what

W N 1887 75 A W N 1881 17

11 P R 1882 Cr 13 P R 1881 Cr S C 91, Oudh A W N 1895 127 1 A L J

123 A W N 1901 92 11 I R 1830 Cr 19 P R 1905 Cr L B R (1872 1892)

317 21 Ind Cas 910 The expression public place must be interpreted in connection

with the expressions public street or public thoroughfare with which it is joined 14 C

L J 670 A Saras taken on rent by a Municipal Committee and used as a stand for

hackney carriage is a public place 69 Ind Cas 975—26 Cr L J 1455

Holding a bullock race and letting thereon is not an offence under this section L B R

(1872 1892) 531

Side betting in dart game—Although the dart game itself cannot be said to be a gambling

game side betting upon the result of throwing the darts may amount to gambling within

the meaning of s 13 C 865

Apprehended—A proceeding against a person not apprehended by the Police is not

illegal L B R (1893 1900) 251

Confiscation—A Magistrate is not competent to order the forfeiture of money found

on the spot 18 P R 1891 Cr S C 63 (Oudh) 291 270, 401 517

Fine or imprisonment—Double punishments of fine and imprisonment are illegal 15

P R 1880 Cr L J 790 104 Ind Cas 230

Game of chance—A game which consists of throwing a ring over a pin is a game of

chance and not a game of skill S A L J 1262 29 Cr L J 738

Fighting cocks are not instruments of gaming L B R (1872 1892), 407

Fighting birds bulls or any other animals are not instruments of gaming L B R

(1872 1892) 317 An instrument of gaming means an instrument devised or intended

for the use of gaming L B R (1872 1892) 155 S C

who arrested of half the fine imposed under

93 of 1877 It is not legal to impose double

25 P R 1880 Cr

Magistrate cannot order for confiscation of the money found in possession of the accused

under this section 24 O C 261

b

fc

c

access to it

Exception of games of mere skill * [13A Nothing in this Act shall apply to any game of mere skill wherever played]

Notes—Vide 8 A L J 1262 33 C W N 910

14 Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure† as to the amount of fine or imprisonment he may inflict

Notes—Vide 2 Ind Jur N S 310

* This section is in force in U I and has been added by s 6 of the U. P Act I

† See Act V of 1898 ss 32, 31 and 410

15 Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees or to imprisonment for a term exceeding one year

Notes—The legality of punishment in a previous case cannot be reopened in a subsequent case 41 P R 1885 Cr Under ss 3 and 15 a Magistrate is incompetent to pass any sentences exceeding Rs 400 or six months rigorous imprisonment A W N 1881 111

16 The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer

Notes—There is no justification in this section for the payment of any portion of a fine imposed under s 13 to the informer L B R (1872 1892) 407 2 P R 1870 Cr Payment of both the fines and sale proceeds of articles to informer is illegal L B R (1872 1892) 378

17 All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387 and 389 of the Code of Criminal Procedure *

18 [Offences under this Act to be 'offences' within the meaning of Penal Code—Repealed by Act 16 of 1874, section I, Schedule, Part I]

THE GENERAL CLAUSES ACT (X OF 1897)

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* The rest of the section has been omitted by G 1 Order of 1937

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THE SCHEDULE — ENACTMENTS REPEALED

THE GENERAL CLAUSES ACT, 1897

ACT NO X OF 1897 *

(Received G. G.'s assent on the 11th March, 1897)

An act to consolidate and extend the [General Clauses Acts 1868† and 1887]†

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 † and 1887 †, It is hereby enacted as follows —

Preliminary.

Short title 1. (1) This Act may be called the General Clauses Act, 1897. †

2 [Repealed by the Act I of 1903]

General Definitions

3 In this Act, and in all [Central Acts] § and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context —

Definitions

Notes —This Act applies to Acts passed by the Governor General in Council only 1 Bom L P 161

(1) 'abet' with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code

Abet

Notes —Section 107 of the Indian Penal Code gives the definition of 'abetment of a thing

1897, Pt V, p 38
dings in Council see
by Reg 3.

- (2) ***"act"**, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions :
- "Act"**

Notes — **"Act done"** includes illegal omission. *Vide* section 32 of Penal Code I Wire, 29, 20 B, 394

- (3)† **"affidavit"** shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing ;
- "Affidavit"**.

Affidavit — The words **"oath"**, **"swear"** and **"affidavit"** include affirmation, declaration, affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing — *Interpretation Act, 1889, 52 Vict c 63, ss 1, 3, 4.*

- (3a)‡ **"Assam Act"** shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Act, 1861 to 1909, "or the Government of India Act, 1915"§ "or by the local legislature or the Governor of Assam under the Government of India Act,"|| [or by the Provincial Legislature or the Governor of Assam under the Government of Indian Act, 1935.]¶
- "Assam Act."**

- (4)** **"barrister"** shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland :
- "Barrister"**

- ††(5) **"Bengal Act"** shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909,|| "or the Government of India Act, 1915,"§ "or by the local legislature or the Governor of the Presidency of Bengal under the Government of India Act,"|| [or by the Provincial Legislature or the Governor of Bengal under the Government of India Act, 1935.]¶
- "Bengal Act"**

[(5a) **"Berar"** shall have the same meaning as is the Government of India Act, 1935.]¶

- ††(5b) **"Bihar and Orissa Act"** shall mean an Act made by the Governor of Bihar and Orissa in Council, under the Indian Councils Act, 1861 to 1909,|| "or the Government of India Act, 1915 § "or by the local legisla-
- "Bihar and Orissa Act"**

(Act XLV of 1860) and the Madras General Clauses

oath" and "swear" in sub ss (35) and (55) s in civil proceedings, see, Ch XVI of the Code of as to criminal proceedings, see Code of Criminal

ture or the Governor of Bihar and Orissa [or Bihar]* under the Government of India Act.†

[(5c) "Bihar Act" shall mean an Act made by the provincial legislature or the Governor of Bihar under the Government of India Act, 1935.]*

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under 'the Indian Councils Acts, 1861',‡ or "the Indian Councils Acts 1861 and 1892"§, "or the Indian Councils Acts, 1861 to 1909"||, "or the Government of the India Act, 1915"¶, "or by the local legislature or the Governor of the Presidency of Bombay under the Government of India Act,"† [or by the provincial legislature or the Governor of Bombay under the Government of India Act, 1935].*

[(7) "British India" shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar] **

Notes.—Quakha does not form part of "British India" as defined in this section. It is what is known as an "administered area". 28 S. L. R. 54—A. I. R. 1931 Sind 123.

(8)†† "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature, shall, for the purposes of this definition, be deemed to be one British possession.

‡[(8a) "Burma Act" shall mean "an Act made by the Lieutenant Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892] "or the Indian Councils Acts, 1861 to 1909" * "or the Government of India Act, 1915"¶ "or by the local legislature or the Governor of Burma under the Government of India Act †

*[(8aa) "Central Act", shall mean an Act of the central legislature, and shall include except in section 5, an Act made by the Governor-General under

by Act I of 1903

|| Added by Act 10 of 1914

¶ The words quoted have been added by Act 24 of 1917.

** Substituted by G. I. Order of 1937

†† Compare the Interpretation Act, 1889 (52 & 53 Vict. c. 63) s. 18 (c)

section 67B of the Government of India Act or section 44 of the Government of India Act, 1935,

*[(8ab) 'Central Government', shall—

(a) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, mean the Federal Government, and

(b) in relation to anything done before the commencement of Part III of the said Act mean the Governor General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor General in Council,

*[(8ac) 'Central legislature' shall mean the Governor General in Council acting in a legislative capacity under the Government of India Act, 1833 the Government of India Act, 1853, the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915 the Indian Legislature acting under the Government of India Act or the Government of India Act, 1935 or the Federal Legislature acting under the Government of India Act, 1935, as the case may require]

†[(8b) 'Central Provinces Act' shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts 1861 to 1909] or the Government of India Act 1915,* 'or by the local legislature or the Governor of the Central Provinces under the Government of India Act †

[(8c) 'Central Provinces and Berar Act' shall mean an Act made by the provincial legislature or the Governor of the Central Provinces and Berar under the Government of India Act, 1935] †

Chapter

(9) Chapter' shall mean a Chapter of the Act or Regulation in which the word occurs

‡[(9a) "Chief Controlling Revenue Authority or "Chief Revenue Authority' shall mean —

(a) in Provinces where there is a Board of Revenue, that Board

(b) in Provinces where there is a Revenue Commissioner, that Commissioner,

(c) in the Punjab the Financial Commissioner and

(d) elsewhere such authority as in relation to matters enumerated in list 1 in seventh schedule to the Government of India Act, 1935 the Central Government and in relation to other matters the Provincial Government may by notification in the official Gazette appoint]

(10)§ Collector shall mean in a Presidency town the Collector of Calcutta Madras or Bombay, as the case may be, and elsewhere the Chief officer in charge of the revenue administration of a district

(11)* 'colony' shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall for the purposes of this definition, be deemed to be one colony.

[Provided that in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, Colony shall not include any dominion as defined in statute of Westminster, 1931 any Province or State forming part of such dominion, or British Burma.]†

(12) "commencement"†, used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

* Commencement

* Commissioner

(13) § 'Commissioner' shall mean the chief officer in charge of the revenue-administration of a division.

administration of a division

(14) 'consular officer' shall include consul-general, consul vice-consul, consular agent, pro-consul, and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul, or consular agent.

* Consular officer

†[(14a) 'Crown contracts' and equivalent expressions shall include contracts made by or on behalf of the Secretary of State in Council, contracts made in the exercise of the executive authority of the Central or any Provincial Government, contracts made by the Federal Railway Authority and contracts made in connection with the exercise of the functions of the Crown in its relation with Indian States.]

†[(14b) 'Crown debts' and equivalent expressions shall include debts due to the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown representative.]

†[(14c) "A grant" (including a transfer of land or of any interest therein or a payment of money) shall be deemed to be a grant of the Crown if it is made by or on behalf of His Majesty, the Secretary of State in Council, the Central Government, any Provincial Government, the Federal Railway Authority, or the Crown Representative.]

†[(14d) "Crown liabilities" and equivalent expressions shall include the liabilities of the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative.]

†[(14e) 'Crown property' and equivalent expressions shall include any property vested in His Majesty or otherwise in the Secretary of State, the Central or any Provincial Government, the Federal Railway Authority or the Crown Representative.]

*[(14f) "Crown representative" shall mean His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States]

*[(14g) 'Crown revenues' and equivalent expressions shall include any revenues vesting in His Majesty]

(15)† "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction

(16)‡ 'document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter

§(16a) 'Eastern Bengal and Assam Act' shall mean an Act made by the Lieutenant Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909

(17) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras, or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid

(18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father

Notes.—Among the Hindus, the adoptive father is also a father.

*[(18a) 'Federal Government' shall—

(a) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, but before the establishment of the Federation, mean, as respects matters with respect to which the Governor General is by and under the provisions of the said Act for the time being in force required to act in his discretion, the Governor-General, and as respects other matters, the Governor General in Council, and

(b) in relation to anything done or to be done after the establishment of the Federation mean the Governor-General acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act,

and shall include—

(i) in relations to functions entrusted under section 124 (1) of the said Act to the Government of a Province, the Provincial

* The words with in brackets have been inserted by G. I. Order of 1937

† As to the definition of High Court see sub-section 21 *infra*

‡ Compare the Indian Evidence Act (I of 1872) As to definition of 'written', see sub-section (55) *infra*

§ The words within quotations have been inserted by Act 10 of 1914

Government acting within the scope of the authority given to it under that subsection, and

(11) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under section 94 (3) of the said Act,

*[(18½) 'Federal Railway Authority' shall mean the Federal Railway Authority constituted by the Government of India Act, 1935 or before the establishment of that Authority, the Central Government]

'Financial year'

(19)† 'financial year' shall mean the year commencing on the first day of April

(20)‡ A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not

Good faith

[(21) "Government" or "the Government" shall include both the Central Government and any Provincial Government]*

Notes.—Under clause India or the administrative Government of India Government of the N

[(22) Government securities shall mean securities of the Central or any Provincial Government and shall include sterling securities of the Secretary of State for India in Council or the Secretary of State]§

(23) ||

(24) 'High Court,' used with reference to civil proceedings, shall mean the highest Civil Court of appeal [not including the Federal Court]* in the part of British India in which the Act or Regulation containing the expression operates

High Court

(25) "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth¶

'Immovable property'

(31) 'Magistrate' shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force

Magistrate

Notes—14 M L J 498

(32) "master used with reference to a ship, shall mean any person (except a pilot or harbour master) having for the time being control or charge of the ship

Master (of a ship)

Month

(33) month shall mean a month reckoned according to the British calendar

Month—The word month according to the Interpretation Act means calendar month see also 13 C W N 425

Moveable property

(34) 'moveable property shall mean property of every description except immoveable property :

Movable property—Papers constituting part of the record in a criminal case is property I W r 98 When earth is severed from the earth it becomes moveable property 27 M 531—14 M L J 155 (F B) 10 M 255 4 M 228

[(34 a) North West Frontier Province Act shall mean an Act made by the local legislature or the Governor of the North West Frontier Province under the Government of India Act, or by the provincial legislature or the Governor of the North West Frontier Province under the Government of India Act, 1935]*

(35) 'North Western Provinces and Oudh Act shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh in Council under the Indian Councils Act 1861 or † 'the Indian Councils Acts 1861 and 1892 †

Notes—Now read United Provinces of Agra and Oudh and Lieutenant Governor of the United Provinces of Agra and Oudh in Council respectively—Vide U P Act VIII of 1909

(36) "oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

Oath

Offences

(37) § offence' shall mean any Act or omission made punishable by any law for

the time being in force

Notes—† de notes under affidavit

*[(37a) official Gazette or "Gazette" shall mean the Gazette of India or as the case may be, the official Gazette of a Province]

*[(37b) Orissa Act" shall mean an Act made by the provincial legislature or the Governor of Orissa under the Government of India Act 1935]

"Part."

(38) "part" shall mean a Part of the Act or Regulation in which the word occurs.

"Person"

(39) "person" shall include any company or association or body of individuals, whether incorporated or not :

Notes —By 62 & 63 Vict, c 63, s 80 "person" includes any body corporate or unincorporated, "unless the contrary intention appears" See also *R v. Gardner*, Comp 79, *R v. York G A & E* 419, *R v. Bateley's Gas Co Ltd*, 645, *Pharmaceutical Soc v London Supply Association* 5 App Cas 857, *Hirst v West Riding*, (1901) 2 K. B 560 C A, 1923 Lab 81. A firm is a person 48 M 792 A company is a person 41 M 621=45 Ind Cas 164.

"Political Agent"

(40)* "Political Agent" shall include—

(a) the principal officer representing the [Crown][†] in any territory or place beyond the limits of British India, and

(b) any officer[†] appointed[†] to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction[†]

Notes —*Vide* A I R 1934 Sind 94=28 S L R 27.

(41)§ "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of judicature at

Fort William, Madras or Bombay, as the case may be.

(42)§ "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council.

"Privy Council"

[(43) "Province" shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province]§

"Province"

||[43a) "Provincial Government", as respects anything done or to be done, after the commencement of Part III of the Government of India Act, 1935, shall mean—

"Provincial Government"

(a) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and

(b) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorised at the relevant date to administer executive Government in the Province in question][†]

"Public nuisance"

(44)** "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code.

Public nuisance —In order to convict a person for committing public nuisance under the Indian Penal Code, injury, danger or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people 9 W R Cr 70, 1 C P L R 25 Cr, 1 Weir, 215

•[(44a) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892,] "Punjab Act"
"or the Indian Councils Acts 1861 to 1909 † 'or the Government of India Act, 1915,' † 'or by the local legislature or the Governor of the Punjab under the Government of India Act" §[or by the provincial legislature or the Governor of the Punjab under the Government of India Act, 1937]]

•[(45) 'registered,' used with reference to a document, shall mean 'Registered' registered in British India under the law for the time being in force for the registration of documents]

(46) "regulation" shall mean a regulation made [by the Central Government] Regulation under the Government of India Act, 1870 'or the Government of India Act, 1915' † "or the Government of India Act" § [or under section 95 or section 96 of the Government of India Act, 1935]]

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment ••

Notes — Rules made under an Act which prescribes that they shall be laid before Parliament

Agents v Lockwood, (1891) A C at p 300

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs
'Schedule'

(49) 'Scheduled District shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 ††
Scheduled District

(50) "section shall mean a section of the Act or Regulation in which the word occurs
Section

* Inserted by Act I of 1903 s 3

† Added by Act 10 of 1911

‡ Added by Act 24 of 1917

§ Added by Act 18 of 1928

|| Inserted by G I Order of 1937

to the

(51)* "ship" shall include every description of vessel used in navigation not exclusively propelled by oars.

(52)† "sign," with its grammatical variations and cognate expressions, shall, with reference to a person

"Sign" who is unable to write his name, include "mark", with its grammatical variations and cognate expressions :

‡[(52a) 'Sind Act' shall mean an Act made by the provincial legislature or the Governor of Sind under the Government of India Act, 1935]

'Son' (53) "son," in the case of any one whose personal law permits adoption shall include an adopted son.

"Sub section" (54) "sub-section" shall mean a sub-section of the section in which the word occurs :

‡[(54a) 'Suits by or against the Crown' and equivalent expressions shall include suits by or against the Secretary of State, the Secretary of State in Council, the Central Government, a Provincial Government or the Crown Representative]

(55)§ "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.

||[(55a) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Act 1861 and 1892,] "or the Indian Councils Acts 1861 to 1900" * "or the Governor" † "or by" ‡ "or the Governor of the United Provinces under the Government of India Act, 1935]†

"Vessel" (56)* "vessel" shall include any ship or boat or any other description of vessel used in navigation

"Will "

(57)* "will" shall include a codicil and every writing making a voluntary posthumous disposition of property :

Will—This definition is incomplete. It does not speak of the ambulatory character of the document. *See Jarman on Wills*, pp 27, 28. It should not take effect until after the death of the testator. *Coele v Coele*, 1 P & D 213, *Masterman v. Moberly*, (1829) 2 Hogg at p 248, *Robertson v Smith*, (1870) 2 P. & D at p 45. Some disposition of property by will is necessary. 49 Ind Cis 929=25 M. L. T 204=9 L. W. 385.

(58)† expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form and

"Writing "

'Year "

(59)‡ "year" shall mean a year reckoned according to the British calendar

Year—Half a year consists of 182 and a quarter of a year of 91 days *Marxell*, p 601.

4 (1) The definitions in section 3 of the following words and

Application of foregoing definitions to previous enactments

expressions, that is to say, "affidavit," "Barrister," § "District Judge," "father," § "immoveable property," "imprisonment," § "Magistrate," "month," "moveable property," "oath," "person," "section," "son," "swear," "will" and "year," apply also, unless there is anything repugnant in the subject or context, to all [Central Acts]† made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "Chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section" and "writing," apply also, unless there is anything repugnant in the subject or context, to all the [Central Acts]† in Council and Regulations made on or after the fourteenth day of January, 1887

*[(4A.) The definitions in section 3 of the expressions "British

Application of certain definitions to all Indian Laws

India," "Central Act," "Central Government," "central legislature," "Chief Controlling Revenue Authority," "Chief Revenue Authority," "Crown contracts," "Crown debts," "Crown grants," "Crown liabilities," "Crown property," "Crown Representative," "Crown Revenues," "Federal Government," "Federal Railway Authority," "Gazette," "Government," "Government Securities," "High Court," "India," "Indian Law," "Indian State," "official Gazette," "Provincial Government" and "suits by or against the "Crown" apply also, unless there is anything repugnant in the subject or context, to all Indian laws

(2) In any Indian law, references, to the 'Provincial Government'

or "Central Government" in any provision conferring power to make appointments to the civil services of, or civil posts under, the Crown in India include references to such person as the Provincial Government or the Central Government, as the case may be, may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving His Majesty in a civil capacity in India include references to any person authorised by the Provincial Government or the Central Government, as the case may be, to make rules for the purpose

(3) The references in any Indian Law to servants of or under, or to service of or under, a Government or a Province, to property of, or belonging to, or vested in, the Secretary of State in Council or a Government or a Province, and to forfeitures to a Government or a Province, shall be construed as references respectively to persons in the service of the Crown, to the service of the Crown, to property vested in the Crown and to forfeitures to the Crown]

General Rules of Construction.

5 (1) Where any [Central Act]* is not expressed to come into
Coming into operation of enactments operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General

†[(2) Where any [Central Act]* is reserved under section 68 of the Government of India Act, 1915, [or under section 32 of the Government of India Act, 1935]†, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified]

(3)§ Unless the contrary is expressed, a [Central Act]* or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement

Notes—A statute takes effect from the first moment of the day on which it is passed, unless another be expressly named in which case it comes into operation immediately on the expiration of the previous day. But where a particular day is named for its commencement, but the Royal assent is not given till a later day the Act comes into operation only on the later day. *Dunn v Carruthers* (1884) 4 N & M 893. *Maruelli* pp 739, 740

†[5A. Where any Act made by the Governor-General under section
Coming into operation of Governor General's Act 44 of the Government of India Act, 1935, is not expressed to come into operation on a particular day, it shall come into operation on the date on which it is enacted by the Governor-General]

¶6 Where this Act, or any [Central Act]* or Regulation made
Effect of repeal after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect, or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed

Effect of Repeal—Although the effect of repealing a statute is to obliterate it as completely as if it had never been passed this rule must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions duly commenced under the repealed law. *Lemmon v. Mitchells*, (1912) 81 L. J. P. C. 173, (1912), A. C. 400 P. C. *Camp v. Southamton* (1916) 85 L. J. K. B. 96 C. 1 (1917) K. B. 259. Where an Act is repealed and the repealing enactment is repealed by another which manifests no intention that the first shall continue repealed, the common law rule was that the repeal of the second Act revived the first and revived it too *ab initio*, and not merely from the passing of the second. *Phillips v. Hopwood*, 12 Rep. 7, *Phillips v. Hopwood*, 496, *Fuller v. Hildman*, 22 L. J. Ch. 321 P. at 358, but this rule ceased to apply in England is concerned. Now by s. 11 of

c. 63) where an Act repealing in whole or in part a former Act, is itself repealed, the last repeal does not revive the Act or provision before repealed, unless words be added reviving them. *Maxwell* p. 728. A vested right under the repealed Act is saved. 9 Ind. Cas. 337=14 O. C. 10 20 C. W. N. 952=34 Ind. Cas. 27, 64 P. W. R. 1912 97 Ind. Cas. 608 23 C. W. N. 604 50 Ind. Cas. 91 (F. B.) But barred under repealed article 51. This rule does not apply to addition of conditions, and is repealed. *Mount v. Taylor*, L. R. 3 C. P. 645, *Leit v. Sanderson* L. R. 4 Q. B. 332 *Mirfin v. Allwood*, L. R. 4 Q. B. 330 13 Ind. Cas. 264=55 S. L. R. 184 8 Ind. Cas. 543 This section is not applicable to a temporary statute, which expires automatically on a given date. A. I. R. 1935 Lah. 188=37 P. L. R. 19 A. I. R. 1933 All. 669 (F. B.) A new law of limitation or an amendment in the law cannot divest a person of a right or title which has vested in him under the previous law of limitation. 1936 A. L. J. 1373=A. I. R. 1936 All. 859

Clause (b)—25 A. 227=17 C. W. N. 605 P. C.

Clause (c)—It includes the right of appeal. 16 C. W. N. 109, see also 45 Ind. Cas. 104 14 L. R. (108) Rev.

Clause (d)—7 M. H. O. R. A. p. 8

Clause (e)—15 C. 357, 16 C. 267, A. I. R. 1936 All. 3=58 A. 495.

*7 (1) In any [Central Act][†] or Regulation, made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose

(2) This section applies also to all [Central Acts][†] made after the

* Compare s. 11 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

part, a former Act, is itself repealed the provisions before repealed, unless words be it is doubtful whether this rule applies to

*8 (1) Where this Act, or any [Central Act]† or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted

“(2) Where any Act of Parliament repeals and re-enacts, with and without modification, any provision of a former enactment then references in any [Central Act]† or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted †

Notes —In the case of a repealing statute substantive rights required under old Act which have remained valid if that Act had remained in force are not destroyed by the passing of the new Act 9 L. R. 152 Rev

9 (1) In any [Central Act]† or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word ‘from,’ and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”

(2) This section applies also to all [Central Acts]† made after the third day of January, 1868 and to all Regulations made on or after the fourteenth day of January, 1887

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10 § (1) Where, by any [Central Act]† or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be

considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies

This section applies also to all [Central Acts]* and Regulations made on or after the fourteenth day of January, 1887

Notes—This section lays down the same rule as s 4 of the Limitation Act. It would appear that it was the intention of the Legislature that the rule should be of universal application 9 A L J 439=14 Ind Cas 154, see also 14 Ind Cas 439 15 C L J 505 16 C W N 721 26 M L J 3, 17 O C 254 15 M L T 233 87 Ind Cas 560 This section refers to limitation. An act is to be taken as done in due time if done on the next day afterwards on which the Court or office is opened 31 N L R 260=A I R 1935 Nag 161=157 Ind Cas 178 1933 M W N 1019 but see 58 M 794=158 Ind Cas 1=1935 M W N 685=69 M L J 253 (1 B)=A I R 1935 Mad 857

11† In the measurement of any distance, for the purposes of any [Central Act]* or Regulation made after the commencement of this Act, distance shall, unless a different intention appears be measured in a straight line on a horizontal plane

12 Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or Duty to be taken *pro rata* in enactments in the nature thereof, is leviable on any given quantity, by weight, measure, or value of any goods or merchandise, than a like duty is leviable according to the same rate on any greater or less quantity

13 In all [Central Acts]* and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females, and

(2) words in the singular shall include the plural and *vice versa*

Notes—*Vide* 24 C L J 382 21 C W N 74 35 Ind Cas 925 (S B) 83 C 292=10 C W N 32=53 Ind Cas 449

13A In all [Central Acts]* and Regulations, references to the Sovereign or to the Crown shall, unless *References to the Sovereign* a different intention appears, be construed as references to the Sovereign for the time being ‡

Powers and Functionaries

14 (1) Where, by any [Central Act]* or Regulation made after the commencement of this Act any power is conferred then unless a different intention appears*§ that power may be exercised from time to time as occasion requires

(2) This section applies also to all [Central Acts]* and Regulations made on or after the fourteenth day of January, 1887

15 Where, by any [Central Act]* or Regulation a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office †

16 Where by any [Central Act]* or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having "for the time being" † power to make the appointment shall also have power to suspend or dismiss any person appointed "whether by itself or any other authority" § in exercise of that power.

Notes—The powers of appointment includes the power of suspension and dismissal

17 (1) In any [Central Act]* or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed

(2) This section applies also to all [Central Acts]* made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Notes—42 M 69=49 Ind Cas 160

18 (1) In any [Central Act]* or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all [Central Acts]* made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

Notes—Where, by a notification published by the Government in the local official Gazette under and by virtue of, the power vested in it by the Madras District Limits Act, (I of 1865), the revenue was changed by the transfer of the area from one Revenue Division to another. *Held* that on the publication of the notification in the Gazette the Collector of the new Revenue Division acquired jurisdiction over all revenue suits then pending in respect of holdings situated in or connected with the area so transferred, and that no formal transfer of the suits from the old to the new Court was necessary to give such jurisdiction 2 L. W. 255=17 M. L. T. 190=25 Ind Cas 269

19 (1) In any [Central Act]* or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all [Central Acts]* made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

Provisions as to Orders, Rules, etc., made under Enactments

20† Where, by any [Central Act]* or Regulation, a power to issue any 'notification,'‡ order, scheme, rule, form or bye-law, is conferred then expressions used in the 'notification'‡ order, scheme, rule, form or bye law, if it is made after the commencement of this Act, shall unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power

21 § Where, by any [Central Act]* or Regulation a power to "issue notifications"§ orders, rules or bye-laws, is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications'‡, orders rules or bye-laws so "issued"||

Notes — Vide 59 Ind Cas 153

22 ¶ Where, by any [Central Act]* or Regulation which is not to come into force immediately on the passing thereof a power is conferred to make rules or bye-laws or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act, or Regulation, but rules, bye laws or order so made or issued,

Notes

Provisions applicable to making of rules or bye laws after previous publication

23 Where by any [Central Act]* or Regulation a power to make rules or bye laws is expressed to be given subject to the condition of the rules or bye laws being made after previous publication, then the following provisions

shall apply, namely —

Vict c 63) and s 10 of the

53 Vict c 63)

Vict, c 63)

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby ,

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Central Government]* or the [Provincial Government]* prescribes ,

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;

(4) the authority having power to make the rules or bye-laws and, where the rules or bye laws are to be made with the sanction, approval or concurrence of another authority that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified ,

(5) the publication in the [official Gazette]* of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made

24† Where any [Central Act]* or Regulation is, after the commencement of this Act, repealed and

Continuation of orders, etc.,
issued under enactments repealed
and re enacted

re-enacted with or without modification, then, unless it is otherwise expressly provided, any "appointment, notification"†, order, scheme, rule, form, or bye-law,

"made or"† issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been "made or"† issued under the provision so re enacted, unless and until it is superseded by any "appointment, notification, † order, scheme rule, form or bye-law "made or † issued under the provisions so re-enacted and when any [Central Act]* or Regulation, which, by

of the Scheduled Districts Act,

to any local area, has, by a

from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section †

Notes —Where a notification was made under s 3 of the Provincial Insolvency Act investing certain officers with powers the same remains in force without fresh notification under the Act V of 1920 as s 3 has been re-enacted — — — — — Ind C's 859=1925 Cal 3 exempting agricultural lands

Miscellaneous

25 Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure* for the time being in force in relation to the issue and the execution of warrants, for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act Regulation, rule or bye law contains an express provision to the contrary

26 Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same [offence] †

Provision as to offences punishable under two or more enactments

Notes—Where either of the two offences under the two different Acts are constituted by the same Act, the offender cannot be punished for both 1923 Lah 312 76 Ind Cas 607=95 Cr L J 225 see also 10 S L R 169 42 Ind Cas 609 Separate sentences can be passed for sale and possession of opium 41 Ind Cas 974=3 Pat L T 483 1

27 † Where any [Central Act]§ or Regulation made after the commencement of this Act authorises or requires any document to be served by post whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

Notes—The word 'give' in connection with the notices in s 41 (2) in C P Tenancy Act is equivalent to serve *Diaz v Parasram* 12 N L R 42=22 Ind Cas 991

28 † (1) In any [Central Act]§ or Regulation and in any rule, bye-law instrument or document made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub section of the enactment in which the provision is contained

(2) In this Act and in any [Central Act]§ or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention

7S)

63)

† c 63) Short titles have been conferred on the unrepealed Central Acts of the Governor General in C which had previously no short titles see the Indian Short Titles Act (XIV of 1897)

appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

29* The provisions of this Act respecting the construction of

Saving for previous enactments rules and bye laws

Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act,

Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act Regulation, rule or bye law made after the commencement of this Act

30† In this Act the expression [Central Act]‡ wherever it

Application of Act to ordinances

occurs except in section 5 and the word "Act" in clauses (9), (12), (38) (48) and (50) of section 3 and in section 25 shall be

deemed to include an ordinance made and promulgated by the [Governor-General]§ under section 23 of the Indian Councils Act 1861|| 'or section 72 of Government of India Act, 1915 ¶ [or by the provincial Legistansse or the Government of Madras under the Government of India Act, 1935]**

THE SCHEDULE—*Repealed by Act I of 1903*

THE GLANDERS AND FARCY ACT (XIII OF 1899)

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* Compare s 40 of the Interpretation Act 1889 (52 & 53 Vict c 63)

† Added by Act XIII of 1914

THE GLANDERS AND FARCY ACT, 1899

ACT NO XIII OF 1899.

(Received the assent of the Governor General on the 20th March, 1899)

An Act to consolidate and amend the Law relating to Glanders and Farcy

WHEREAS it is expedient to consolidate and amend the law relating to glanders and farcy ; It is hereby enacted as follows —

interpretation is re-enacted in the same terms the Legislature is deemed to have adopted that interpretation 15 L R Ch 703=23 L T 289=18 W R 1056

Short title and extent 1 (1) This Act may be called the Glanders and Farcy Act, 1899

[(2) It extends to the whole of British India]*†

(3) It shall come into force at once

2 (1) In this Act, unless there is anything repugnant in the subject or context, "diseased," means affected with glanders or farcy or any other dangerous epidemic disease among horses which the [Provincial Government]† may, by notification in the [official Gazette]§ specify in this behalf

(2) The provisions of this Act relating to horses shall apply also to 'camels', asses and mules

Notes —The meaning given under this section is to be followed unless any other meaning is indicated by the context

Application of Act to local areas by [Provincial Government]*. ||[3 (1) The [Provincial Government]† may, by notification in the [official Gazette]§ apply this Act or any provision of this Act to any local area, to be specified in such notification, within [the Province] ¶

(2) In any such notification the [Provincial Government]† may further direct that the Act or any provision so applied shall apply in respect of—

(a) all or any of the diseases mentioned or specified in a notification under section 2, sub-section (1),

(b) all animals or any class of animals mentioned in section 2, sub-section (2)]

I Order of

I C

brackets read the words ' British

Notes—Written notice must be given in the official Gazette by the Provincial Government *vide Moyle v Jenkins* 15 L J Q B 112 *Wilson v Nightingale* 70 R R 727 *P v Sinner* 55 L J M C 153

4 (1) When this Act has been so applied to a local area the [Provincial Government]* to [Provincial Government]* may, by notification in the [official Gazette]† appoint such persons as it thinks fit to be Inspectors

under this Act and to exercise and perform, within the whole of the local area or such portions thereof as it may prescribe the powers conferred and the duties imposed by this Act on such officers

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code

Notes—Section 21 of the Indian Penal Code lays down the names of persons who are public servants Chapter IX of the same Code lays down the offences by or relating to public servants

5 Within the local limits for which he is so appointed any such Power of entry and search Inspector as aforesaid may subject to such rules as the [Provincial Government]* may make in this behalf, enter and search any field building or other place for the purpose of ascertaining whether there is therein any horse which is diseased

Notes—The general power of entry and search by an Inspector is given by this section Only such power can be restricted by rules made by the local Government

Power of seizure **6** Within such limits as aforesaid, the Inspector may seize any horse which he has reason to believe to be diseased

Notes—The extraordinary power is given in order to protect other horses from this contagious disease

7 (1) On any such seizure as aforesaid the Inspector shall cause Horse to be examined by the horse seized to be examined as soon as possible by such Veterinary Practitioner as the [Provincial Government]* may appoint in this behalf

Provided that, when the Inspector is also Veterinary Practitioner so appointed he may make the examination himself

(2) For the purpose of the examination the Veterinary Practitioner may submit the horse to any test or tests which the [Provincial Government]* may prescribe

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* In British India the words within brackets have been substituted by G I Order of 1937 In British Burma for these words read the word 'Governor' *vide* G B Order of 1937

† Substituted in British India by G I Order of 1937 But in Burma read the word 'Gazette' *vide* G B Order of 1937

Horse to be destroyed if found diseased otherwise restored

8 (1) If the Veterinary Practitioner certifies in writing that the horse is diseased, the Inspector shall cause the same to be immediately destroyed

Provided that, in the case of any disease other than glanders or farcy, horses certified to be diseased as aforesaid may, subject to any rules which the [Provincial Government]* may make in this behalf, be either destroyed or otherwise treated or dealt with as the Veterinary Practitioner may deem necessary

(2) If, after completing the examination, the Veterinary Practitioner does not certify that the horse is diseased, the Inspector shall at once deliver the same to the person entitled to the possession thereof

Notes —For safety of other horses this extraordinary power is given to the Veterinary Practitioner Even in cases of mistake no suit lies against him if he has exercised that power in good faith *vide* s 16 *infra*

9 (1) When any diseased horse has been in any building shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of the building, shed, place, or lines, or to the person in charge thereof, directing him to have the same disinfected and the internal fittings thereof, or such other things found therein or near thereto as the [Provincial Government]* may by rule prescribe, destroyed

(2) On the failure or neglect of such owner or other person as aforesaid to comply with the notice within a reasonable time, the Inspector shall cause the building, shed, place or lines to be disinfected and the fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from the owner or other person as if it were a fine

Notes —A master is liable for the acts of his servants *Barnet v Ackroyd*, 41 L J M C 110

10 The owner or any person in charge of a diseased horse shall give immediate information of the horse being diseased to the Inspector or to such authority as the [Provincial Government]* may appoint in this behalf

Notes —No provision is made in this Act for the punishment of failure to give notice

11. No person in charge of any horse which has been in the same field building or place as or in contact with, a diseased horse, shall remove such horse except in good faith for the purpose of preventing infection, or under a licence to be granted by the Inspector, and subject to the conditions of the licence

Prohibition against removal without licence of horse which has been with diseased horse

Notes —Nothing is said to be done or believed in good faith which is done or believed without due care and caution *Penal Code* s 52, see also General Clauses Act 1897, s 3 (20) It requires due care and caution *SI B*, see also *IS G W N 785*, *IO W R Cr 20*

In British India the words within brackets have been substituted by G I O der of 1937 In British Burma for these words read the word Governor, *vide* G. B Order of 1937

12 (1) Whoever, being an Inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field building or other place, or seizes or detains any horse on the pretence that it is diseased shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed

Limitation—Ordinarily there is no limit of instituting a case for a criminal offence Under this section a time limit of 3 months is put

13 Whoever refuses or neglects to comply with any notice issued by the Inspector under section 9, or removes any horse in contravention of section 11, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both

Notes—This section makes acts done in contravention to ss 9 and 11 punishable

Power to make rules **14** (1) The [Provincial Government]* make rules to carry out the purposes and objects of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(a) regulate entries searches and seizures by Inspectors under this Act,

(b) regulate the use of tests and the isolation of horses subjected thereto and provide for recovering the expense of detaining isolating and testing horses from the owners or persons in charge thereof as if it were a fine

(c) regulate the treatment as the case may be of diseased, and the disposal of

diseased horses have been and prescribed what things found therein or near thereto shall be destroyed, and

(c) regulate the grant of licences under section 11 and the conditions on which those licences shall be granted

(3) All rules under this section shall be published in the [official Gazette]*, and, on such publication, shall have effect as if enacted by this Act

(4) In making any rule under this section the [Provincial Government]† may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both

Notes—Such rules will have the force of law

* In British India the words within brackets have been substituted by G O Order of 1937 In British Burma for the word Provincial Government read the word Governor and for the word official Gazette read the word Gazette vide G O Order of 1937

15 Any Veterinary Practitioner may be appointed by the [Provincial Government]* to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act or of any rule thereunder

Appointment of same person to be both Inspector and Veterinary Practitioner

16 No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act

Protection to persons acting under Act

17 (*Repealed by Act X of 1914*)

THE SCHEDULE — [*Repealed by Act X of 1914*]

THE HACKNEY CARRIAGE ACT (XIV OF 1879).

CONTENTS

PREAMBLE	SECTIONS
SECTIONS	
1 Short title Saving	5 Power to extend operation of rules beyond limits of municipality or cantonment
2 Interpretation-clause	6 What rules under sections 3 and 4 may provide for
3 Application of Act to municipalities	7. Penalty for breach of rules
Power of committees to make rules	8 Disposal of fees and payment of expenses
Confirmation and publication of rules	9. Power of Magistrate to decide disputes regarding fares
Power of commissioners to rescind rules	10 In case of dispute hirer may require driver to take him to Court
4 Power to make rules for cantonments	

THE HACKNEY CARRIAGE ACT, 1879.

ACT NO. XIV OF 1879.

(*Received the G G's assent on the 5th September, 1879*)

An Act for the Regulation and Control of Hackney-carriages in certain Municipalities and Cantonments

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments, It is hereby enacted as follows

Preamble

Short title

1 This Act may be called the Hackney Carriage Act, 1879†

But nothing herein contained shall affect any power conferred by any law relating to municipalities, or any rule, made in exercise of any such power.

Saving

Interpretation clause

2 In this Act—

"Hackney-carriage" means any wheeled vehicle drawn by

* In British India the words within brackets have been substituted by G. 1, 1937 In Burma for these words read the word "Governor". Vide G. B. C.

† Certain words after this repealed by Act 17 of 1914 have been omitted.

When any rules have been made under this Act for any municipality, the "Commissioner" may, subject to the control of the [Central Government]† extend the operations of such rules to any cantonment the boundary of which is not more than six miles distant from the boundary of such municipality

What rules under sections 3 and 4 may provide for

6 The rules to be made under section 3 or section 4 may, among other matters,—

(a) direct that no hackney-carriage or no hackney-carriage of a particular description shall be let to hire or taken to ply, or offered for hire except under a licence granted in that behalf,

(b) direct that no person shall act as driver of a hackney-carriage except under a licence granted in that behalf,

(c) provide for the issue of the licences referred to in clauses (a) and (b) prescribe the conditions (if any) on which such licences shall be granted and fix the fees (if any) to be paid therefor,

(d) regulate the description of animals, harness and other things to be used with licenced carriages and the condition in which such carriages, and the animals, harness and other things used therewith, shall be kept, and the limits (if any) to be carried after sunset and before sunrise

(e) provide for the inspection of the premises on which any such carriages animals, harness and other things are kept,

(f) fix the time for which such licences shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension,

(g) provide for the numbering of such carriages,

(h) determine the times at which, and the circumstances under which any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same,

(i) appoint places as stands for hackney carriages and prohibit such carriages waiting for hire except at such places,

(j) limit the rates, or fares, as well for time and distance, which may be demanded for the hire of any hackney-carriage, and prescribe the minimum speed at which such carriages when hired by time shall be driven

(k) limit the number of persons and the weight of property, which may be conveyed by any such carriages,

(l) require the owner or person in charge of any such carriage to keep a printed list of fares in English and such other language as may be prescribed affixed inside such carriage in such place as may be determined by the rules and prohibit the destruction or defacement of such list,

(m) require drivers to wear a numbered badge or ticket, and to produce their licences when required by a Magistrate or other person authorised by the rules in this behalf and prohibit the transfer or lending of such licences and badges and

(n) provide for the deposit of property found in such carriages,

* The word will in quotation marks is substituted by Act 4 of 1914

† In British India the words will in brackets have been substituted by G.O. 1937 In Burma for these words read the word Governor vide G.O. Order of

and the payment of a fee by the owner of such property on the delivery thereof to him

7 Any person breaking any rule made under this Act shall be
 Punished with fine which may extend to
 fifty rupees

Notes—Rule 1 of the rules framed under this Act for the Umballa Cantonment does not render driving an unlicensed carriage punishable under this section 7 P R 1892 Cr Refusal of a driver to ply the carriage is not punishable because he is not the keeper under rule 15 of the Insein Rules under the Hackney carriage Act 24 Ind Cas 960 Breach of the condition of a licence as set out in rule 7 of the above Act not being a breach of a rule is not punishable under this section L B R (1892 1896) Vol 1 p 125

8 The amount of any fees received and the amount of any
 Disposal of fees and payment of expenses expenses incurred in giving effect to this Act shall in any municipality be credited and debited respectively to the municipal fund, and in any cantonment where there is a cantonment fund, to such fund

9 If any dispute arises between the hirer of any hackney-carriage
 Power of Magistrate to decide disputes regarding fares and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen, and such Magistrate or bench may, beside determining the amount so in dispute, direct that either party shall pay the other such sum as compensation for loss of time as such Magistrate or bench thinks fit

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine

The decision of any Magistrate or bench in any case under this section shall be final

When any such case is heard by a bench any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases

Notes—The above section is merely intended to provide a simple and summary means of settling disputes between the hirers and owners of hackney carriages and parties are not hereby excluded from having recourse to the Civil Courts A W N 1893 203

10 If at the time any dispute mentioned in section 9 arises, any
 In case of dispute hirer may require driver to take him to Court Magistrate or bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules supply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or bench for the purpose of making an application under that section

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month or with fine not exceeding fifty rupees, or with both

THE IDENTIFICATION OF PRISONERS ACT (XXXIII OF 1920)

CONTENTS.

SECTIONS

SECTIONS

1	Short title and extent	6	Resistance to the taking of measurements etc
2	Definitions	7	Destruction of photographs and record of measurements etc on requisition
3	Taking of measurements etc of convicted persons	8	Power to make rules
4	Taking of measurements etc of non convicted persons	9	Bar of suits
5	Power of Magistrate to order a person to be measured or photographed		

THE IDENTIFICATION OF PRISONERS ACT, 1920 ACT NO XXXIII OF 1920.

(Received the assent of the Governor General on the 9th September, 1920)

An Act to authorise the taking of measurements and photographs of convicts and others

WHEREAS it is expedient to authorise the taking of measurements and photographs of convicts and others It is hereby enacted as follows :—

Short title and extent 1 (1) This Act may be called the Identification of Prisoners Act 1920 and
[(2) It extends to the whole of British India including British Baluchistan, the Sonthal Parganas and the district of Angul]*

Notes — The object of the Bill is to provide legal authority for the taking of measurements of convicted or arrested persons and the identification of other European countries of legislation —State

ment of Objects and Reasons

Definitions

†[2 In this Act, unless there is anything repugnant in the subject or context,—
(a) 'measurements' include finger impressions and foot print impressions
(b) police officer means an officer in charge of a police-station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure 1898†, or any other police officer not below the rank of sub-inspector and
(c) 'prescribed' means prescribed by rules made under this Act §

* Sub section (2) has been omitted in Burma by G. B. Order of 1937
† Sections 2, 3 and 7 of this Act have been amended in their application to Bombay by Bom. Act XI of 1922
V of 1898
§ In Burma after clause (c) the following clause (d) has been added by II of 1933 —
(d) Specimen of a person's handwriting means such words or figures or written by that person as may be sufficient for the comparison of that person's writing with another

Taking of measurements, etc ,
of convicted persons

3 Every person who has been —

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction, or

(b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898,*

shall, if so required, allow his measurements and photograph to be taken by a police-officer in the prescribed manner.

Notes —This section states the offences for committing which the measurements and photograph of the accused can be taken

4 Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police-officer, allow his measurements to be taken in the prescribed manner †

Notes —Before this Act came into force Police officers used to take finger impressions, photographs, etc , of criminals But there was no legal sanction for such procedure —*Vide Statement of Objects and Reasons*

‡[5. If a Magistrate is satisfied that for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898*, it is expedient to direct any person to allow his measurements or photograph to be taken, § he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall [allow his measurements or photograph to be taken, as the case may be, by a police officer]|| .

Provided that no order shall be made directing any person to be photographed¶ except by a Magistrate of the first class

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceedings]

§ 82 of the Registrar accused in Court for 35 Under this section as defined in the Act include finger impressions and foot print impressions) or photographs of convicts and others

* Act V of 1898

† After section 4 the following section 4A has been inserted in Burma by Bur. Act II of 1938 —

thumb-impressions of the accused taken at the trial is admissible in evidence 43 C L J 79 30 C W N 373-93 Ind Cas 73-27 Cr L J 409-A I R 1926 Cal 631

6 (1) If any person who under this Act is required to allow his measurements or photograph to be taken

Resistance to the taking of measurements etc

resists or refuses to allow the taking of the same it shall be lawful to use all means

necessary to secure the taking thereof

(2) Resistance to or refusal to allow the taking of measurements or photographs* under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code †

Notes — Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements etc which is a normal incident of police work in India as elsewhere on a regular footing No measurements etc of any person will be taken compul- only unless that person has been arrested — *Statement of Objects and Reasons*

‡[7 Where any person who, not having been previously convicted

Destruction of photographs and records of measurements etc on acquittal of an offence punishable with rigorous imprisonment for a term of one year or upwards, has had his measurements taken

or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall unless the Court or (in a case where such person is released without trial) the District Magistrate or Sub-divisional officer for reasons to be recorded in writing otherwise directs, be destroyed or made over to him

Notes — Under section 4 measurements etc, can be taken of non convicted persons under certain circumstances In case of their release measurements etc of such persons are to be destroyed

Power to make rules

8 (1) The [Provincial Government]§ may make rules for the purpose of carrying into effect the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for—

[(a) restrictions on the taking of photographs of persons under section 5] ||

(b) the places at which measurements and photographs may be taken

(c) the nature of the measurements that may be taken ,

(d) the method in which any class or classes of measurements shall be taken ,

(e) the dress to be worn by a person when being photographed under section 3 , and

(f) the preservation safe custody, destruction and disposal of records of measurements and photographs.*

* In Burma after this the following words have been inserted by Bur Act II of 1938 or to furnish a specimen of his handwriting or signature

† XLV of 1900

- 9 No suit or other proceeding shall lie against any person for anything done, or intended to be done, in good faith under this Act or under any rule made thereunder.
- Bar of suits

Notes — This section indemnifies any person acting in good faith under this section.

THE IMMIGRATION INTO INDIA ACT (III OF 1924.)

CONTENTS

SECTIONS

- 1 Short title, commencement and extent
- 2 Definitions
- 3 Rules as regards entry into and residence in British India

SECTIONS

- 4 Power to make rules
- 5 Persons claiming exemption to establish case

IMMIGRATION INTO INDIA ACT, 1924

ACT III OF 1924.

(Received the assent of the Governor-General on the 1st March, 1924)

An Act to regulate the entry into and residence in [British India]* of persons domiciled in other British possessions

WHEREAS it is expedient to make provision for regulating the entry into and residence in [British India]* of persons domiciled in the British possessions on a basis of reciprocity, It is hereby enacted as follows —

Short title, commencement and extent

1 (1) This Act may be called the Immigration into India Act, 1924

(2) It shall come into force on such date as the [Central Government]† may notify in the [official Gazette]‡

[(3) It shall extend to the whole of British India, including British Baluchistan]§

Definitions

2 In this Act unless there is anything repugnant in the subject or context,—

(a) "British possession" means any part of His Majesty's dominions other than [British India]*, the United Kingdom and Ireland, and includes protectorates and territories which are or may be administered by a dominion as a mandatory on behalf of the League of Nations

(b) "entry" includes landing at any port in [British India]* during the period of the ship's stay on her way to a destination outside [British India]*

* I. P. emp. for 'India' read "British India" and for the word "British India" read "British India" read f 1937
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3 * The [Central Government]† may make rules for the purpose of securing that persons not being of [Indian]‡ origin, domiciled in any British possession shall have no greater rights and privileges, as regards entry into and residence in [British India]‡ than are accorded by the law and administration of such possession to persons of [Indian]‡ domicile

Notes —The rights of such persons are based on reciprocity

4 The [Central Government]‡ may, without prejudice to the generality of the powers contained in section 3 of this Act make rules—

- (a) to provide for the establishment of a suitable agency to administer the rules and to define its functions and powers,
- (b) to provide suitable penalties for the contravention of such rules or attempt to contravene them or the abetment of such contravention and
- (c) to authorise the arrest of any person contravening or reasonably suspected of contravening any such rule and to prescribe the duties of public servants and others in regard to such arrests

5 If any person alleged to be domiciled in any British possession and to be subject to the provisions of this Act raises the plea that he is not so domiciled or that the provisions of the said Act do not apply to him the onus of proving the truth of such plea shall lie on the aforesaid person

INDIAN STATES (PROTECTION) ACT, (XI OF 1934)

CONTENTS

SECTIONS	SECTIONS
1 Short title, extent and commencement	5 Power to issue directions prohibiting certain Acts
2 Conspiracy to overthrow administration of a state in India	6 Penalty for disobeying order under section 3
3 Application of Act XVIII of 1931	7 Cognizance of offences under section 2 by courts
4 Power to prohibit assemblies	

INDIAN STATES (PROTECTION) ACT, 1934

ACT NO XI OF 1934

(Received the assent of the Governor General on 20th April 1934)

An Act to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert or to excite disaffection towards, or to obstruct such Administrations

WHEREAS it is expedient to protect the Administrations of States in India, which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations It is hereby enacted as follows :—

the following — Subject to the Act 1935 and of any order in

Notes — "Experience in recent years has shown that the ordinary law is not adequate

Short title, extent and com-
mencement

1 (1) This Act may be called the
Indian States (Protection) Act, 1934

(2) It extends to the whole of British India, including British
Beluchistan and the Sonthal Parganas

(3) This section and sections 2 and 3 shall come into force at once,
the remaining sections of this Act shall come into force in any district
or area only when for such time as the [Provincial Government]*,
by notification in the [official Gazette],* directs

2 Whoever, within or without British India, conspires to over-
awe, by means of criminal force or the
show of criminal force, the Administration
of any State in India shall be punished
with imprisonment which may extend to seven years, to which fine
may be added.

Application of Act XXIII of
1931

3 The Indian Press (Emergency
Powers) Act, 1931†, as amended by the
Criminal Law Amendment Act, 1932‡ shall
be interpreted —

(a) as if in sub-section (1) of section 4 of the Act, after clause
(i) the following word and clause were inserted, namely —
"or

(j) to bring into hatred or contempt or to excite disaffection
towards the Administration established in any state in India",

(b) as if in Explanation 2 and Explanation 3 to the said sub-
section, after the word 'Government' the words "or Administration",
and after the letter and brackets '(d)' the words letter and brackets
"or clause (j)" were inserted, and

(c) as if after Explanation 4 to the said sub section the following
Explanation were inserted, namely —

'Explanation 5 — Statements of fact made without malicious inten-
tion and without attempting to excite hatred, contempt or disaffec-
tion shall not be deemed to be of the nature described in clause (j) of
the sub-section' §

4 (1) When a District Magistrate or in a Presidency-town the
Chief Presidency Magistrate is of opinion
that within his jurisdiction attempts are
being made to promote assemblies of persons for the purpose of pro-
ceeding from British India into the territory of a State in India and
that the entry of such persons into the said territory or their presence

* Substituted by G I Order of 1937

† XXIII of 1931

‡ XXIII of 1932

§ Certain words after this repealed by G I Order of 1937 have been omitted.

therein is likely or will tend to cause obstruction to the Administration of the said State or danger to human life or safety or a disturbance of the public tranquility or a riot or an affray within the said territory, he may, by order in writing stating the material facts of the case, prohibit within the area specified in the order the assembly of five or more persons in furtherance of the said purpose

(2) When an order under sub-section (1) has been made, and for so long as it remains in force, any assembly of five or more persons held in contravention of the order shall be an unlawful assembly within the meaning of section 141 of the Indian Penal Code* and the provisions of Chapter VIII of the Indian Penal Code, and of Chapter IX of the Code of Criminal Procedure 1898,† shall apply accordingly

(3) An order under sub-section (1) shall be notified by proclamation, published in the specified area in such places and in such manner as the Magistrate think fit, and a copy of such order shall be forwarded to the [Provincial Government] ‡

(4) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the [Provincial Government]‡, by notification in the [official Gazette]‡, otherwise directs

5 (1) Where, in the opinion of a District Magistrate or in a Presidency-town the Chief Presidency Magistrate, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may by written order stating the material facts of the case and served in the manner provided by section 134 of the Code of Criminal Procedure, 1898†, direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said State

(2) An order under sub-section (1) may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*

(3) An order under sub-section (1) may, be directed to a particular individual, or the public generally

(4) District Magistrate or Presidency Magistrate may either on his own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1) by himself or by his predecessor in office

(5) Where such an application is received the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order, and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing

(6) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the [Provincial

* XLV of 1860

‡ Substituted by G. I. Order of 1937

† V of 18

Government]* by notification in the [official Gazette],* otherwise directs

6 Whoever wilfully disobeys or neglects to comply with any direction contained in an order made under sub section (1) of section 5 or in such order as altered under sub section (4) of that section shall be punishable with imprisonment which may extend to six months or with fine or with both

(2) An offence under this section shall be an offence for which a police-officer may arrest without warrant

7 No Court shall take cognizance of any offence punishable under section 2 unless upon complaint made by order of, or under authority from [the Central Government if the offence is committed outside British India and the Provincial Government in other cases]*

THE INDIAN STATES (PROTECTION) AGAINST DISAFFECTION ACT X OF 1922

CONTENTS.

PREAMBLE SECTIONS

- 1 Short title and extent
- 2 Definitions
- 3 Penalty
- 4 Power to forfeit certain publications

SECTIONS

- or to detain them in course of transmission through post
- 5 Court by which and condition subject to which offence may be tried

THE INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT, 1922

An Act to prevent the dissemination by means of books newspapers and other documents of matter calculated to bring into hatred or contempt or to excite disaffection against Princes or Chiefs of States in India* or the Governments or administrations established in such states

WHEREAS it is expedient to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt or to excite disaffection against Princes or Chiefs of States in India* or the Government or Administrations established in such states It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Indian States (Protection Against Disaffection) Act 1922

[(2) It extends to the whole of British India including British Baluchistan and the Sonthal Paraganas]†

Definitions

2 In this Act, unless there is anything repugnant in the subject or context —

* Subst. added by G. I. Order of 1937

* In Burma after it insert the words "or Burma" vide G. B. Order of 1937

† In Burma sub section (2) has been omitted by G. B. Order of 1937

(a) "book" and "newspaper" have the meanings respectively assigned to them by the Press and Registration of Books Act, 1867

(b) "disaffection" includes disloyalty and all feelings of enmity, and

(c) "document" includes any painting, drawing photograph or other visible representation

3 (1) Whoever edits, prints or publishes or is the author of any book, newspaper or other document which brings or is intended to bring into hatred or contempt, or excites or is intended to excite disaffection towards, any Prince or Chief of a State in India* or the Government or administration established in any such State, shall be punishable with imprisonment which may extend to five years or with fine, or with both

(2) No person shall be deemed to commit an offence under this section in respect of any book, newspaper or other document which without exciting of being intended to excite hatred contempt or disaffection, contains comments expressing disapprobation of the measures of any such Province, Chief, Government or Administration as aforesaid with a view to obtain their alteration by lawful means or disapprobation of administration or other action of any such Prince Chief, Government or Administration

4 The provisions of ss 99A to 99G of the Code of Criminal Procedure, 1898 and of ss 27B to 28D of the Indian Post Office Act, 1898, shall apply in the case of any book newspaper or other document containing matter in respect of which any person is punishable under s 3 in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections

5 No Court inferior to that of [a Presidency Magistrate or]† a Magistrate of the first class shall proceed to the trial of any offence under s 3, and no Court shall proceed to the trial of any such offence except on complaint made, by, or under authority from the [Provincial Government]‡

THE IRON AND STEEL DUTIES ACT (XXXI OF 1934). CONTENTS

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THE IRON AND STEEL DUTIES ACT, 1934.

ACT NO. XXXI OF 1934

(Received the assent of the Governor General on the 7th September 1934)

An Act [to provide for the modification and continuance of the protection afforded to the iron and steel industry in British India and]* to impose an excise duty for revenue purposes upon certain steel

WHEREAS it is expedient [to provide for the modification and continuance of the protection afforded to the iron and steel industry in British India, and]* to impose an excise duty for revenue purposes upon certain steel It is hereby enacted as follows —

Notes — The protection afforded to the steel industry in India by the Steel Industry (Protection) Act 1927 as subsequently amended will expire on the 31st October of the year 1934. In accordance with the provisions of that Act as amended to any extent by the Tariff Commission, the Tariff Commission has recommended by the Tariff Commission a considerable reduction in the level of import duties in certain important cases with a resultant reduction in the revenue derived from duties of customs. It has therefore been found necessary to impose an excise duty on the production of steel ingots in British India and to impose a duty on steel ingots. This counter duty is recommended by the Board as a measure of protection which has

Short title extent and commencement

1 (1) This Act may be called the Iron and Steel Duties Act, 1934

[(2) It extends to the whole of British India]*

(3) This section and section 10 shall come into force at once the remaining sections shall come into force on the 1st day of November, 1934

Amendment of section 3 Act VIII of 1894

2 In section 3 of the Indian Tariff Act, 1894†

(a) for sub sections (4) and (5) the following sub-section shall be substituted, namely —

‘(4) If the [Central Government]‡ is satisfied after such inquiry as he thinks necessary, that any duty imposed on any article by Part VII of the Second Schedule has become ineffective or excessive for the purpose of securing the protection intended to be afforded by such duty to a similar article manufactured in India, he may, by notification in the [official Gazette]§ increase or reduce such duty to such extent as he thinks necessary either generally or in respect of such article when imported from or manufactured in any country or countries specified in the notification

Provided that the duty leviable on any such article shall in no

* In Burma sub section (2) has been omitted by G. B. Order of 1937

1937 d by G. I. Order of
1937 B. Order of 1937
1937 by G. I. Order of
3 Order of 1937

case be less than the duty leviable on a like article of British manufacture,' and

(b) sub section (6) shall be renumbered as sub section (5)

3 (1) The amendments specified in the Schedule to this Act shall be made in the Second Schedule to the Indian Tariff Act 1894* and shall have effect only up to the 31st day of March, 1941

Amendment of Schedule II
Act VIII of 1894

(2) Notwithstanding anything contained in section 4 of the Indian Finance (Supplementary and Extending) Act 1931 the additional duties imposed by that section shall not be levied or collected on any article chargeable with duty under Item No 142 143, 144 145 145A, 146 146A, 147 148, 149 149A, 150 153 or 154 of the Second Schedule to the Indian Tariff Act 1894,* as amended by this Act

4 A duty of excise shall be levied at the rate of four rupees per ton on all steel ingots produced in [British India]† after the commencement of this Act and shall be payable by the manufacturer thereof

Excise duty on steel ingots

5 (1) If any duty payable under section 4 is not paid within the time fixed by rules made in that behalf under this Act it shall be deemed to be an arrear and the authority to which such duty is payable may in lieu thereof recover any sum not exceeding twice the amount of duty unpaid which such authority may in its discretion think it reasonable to require

Recovery of duty with penalty

(2) An arrear of duty or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of land revenue and shall be recoverable in addition to and not in substitution for any other penalty incurred under this Act

6 The [Central Government]‡ may by notification in the [official Gazette]‡ declare that any of the provisions of the Sea Customs Act 1878§ relating to the levy of and exemption from customs duties drawback of duty, warehousing offences and penalties confiscation and procedure relating to offences and appeals shall with such modifications and alterations as he may consider necessary or desirable to adapt them to the circumstances be applicable in regard to like matters in respect of the duty on steel ingots imposed by section 4

Application of the provisions of Act VIII of 1878 to the duty on steel ingots

7 When steel ingots on which the duty of excise imposed by this Act has been paid, or articles of iron or steel manufactured in [British India]† from such ingots are exported out of [India]† there shall be payable to the

Rebate on export of steel ingots and articles manufactured therefrom

* VIII of 1894

† In Burma for the words 'British India' read 'British Burma' and for the word 'India' read 'Burma' vide G. O. Order of 193

‡ by G. I. Order
Gazette

exporter of such ingots or articles, subject to such conditions as the [Central Government]* may prescribe, a refund at the following rates, namely —

on ingots, blooms and billets—a refund at the rate of four rupees per ton, on other manufactures of iron or steel—

(a) not fabricated—a refund at the rate of five and one third rupees per ton

(b) fabricated—a refund at the rate of six rupees per ton

8 Whoever evades or attempts to evade the payment of any duty of excise payable by him under this Act, or fails to supply any information which he is required by any rules made under this Act to supply or knowingly supplies false information, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees or with both

Penalty for evasion of duty or failure to supply information

9 (1) The [Central Government]* may, by notification in the [official Gazette]† make rules to carry into effect the purposes and objects of this Act

Power of [Central Government]* to make rules

(2) In particular and without prejudice to the generality of the foregoing power such rules may —

(a) provide for the assessment and collection of the duty payable under section 4 and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which and the time at which the duty shall be payable, and the recovery of arrears,

(b) impose on manufactures of steel ingots the duty of furnishing information, keeping records and making returns and prescribe the nature of such information, and the form of such records and returns, the particulars to be contained therein and the manner in which they shall be verified,

(c) authorise and regulate the inspection of any premises used for manufacture of steel ingots,

(d) authorise and regulate the composition of offences against or liabilities incurred under the Act and rules, and

(e) prescribe the conditions under which the refunds referred to in section 7 shall be payable

(3) In making any rule under this section the [Central Government]* may provide that a breach of the rule shall be punishable with fine not exceeding two thousand rupees

Repeal

10 Sub section (3) of section 2 of the Steel Industry (Protection) Act, 1927,† is hereby repealed

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor, vide G. B. Order of 1937.

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Gazette, vide G. B. Order of 1937, § III of 1927.

THE SCHEDULE

(See section 3)

Amendments to the second Schedule to the Indian Tariff Act 1894.

1 For Item No 142 the following item shall be substituted namely —

"142	COAL TUNS tipping wagons and the like conveyances designed for use on light rail track, if adapted to be worked by manual or animal labour and if made mainly of iron or steel, and component parts thereof made of iron or steel—	
	(a) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent <i>ad valorem</i> which ever is higher
	(b) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 40 per ton or 20 per cent <i>ad valorem</i> whichever is higher

2 For Item No 143 the following item shall be substituted, namely —

"143	IRON or STEEL angle, channel tee flat beam zed trough and piling	
	(a) not fabricated—	
	(i) of British manufacture— not coated with other metals	1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent <i>ad valorem</i> which ever is higher
	coated with other metals	Do
	(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 43 per ton
	(b) fabricated—	
	(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 40 per ton
	(ii) not of British manufacture	Do

3 For Item No 144 the following item shall be substituted namely —

"144	IRON or STEEL BAR and ROD—	
	(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 10 per ton or 10 per cent <i>ad valorem</i> whichever is higher
	(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 39 per ton or 20 per cent <i>ad valorem</i> whichever is higher

4, For Item No 145 the following item shall be substituted, namely —

145	IRON or STEEL BOLTS and NUTS including hook bolts and nuts for roofing but excluding fish bolts and nuts—
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(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India, or 10 per cent <i>ad valorem</i> which ever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 1 9 0 per cwt
IRON or STEEL FISH BOLTS and NUTS—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India, or 10 per cent <i>ad valorem</i> , which ever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 4 5 0 per cwt "

5 For Item No. 145A the following item shall be substituted, namely .—

"145A IRON or STEEL RIVETS—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent <i>ad valorem</i> , which ever is higher
(ii) not of British manufacture.	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 1 14 0 per cwt "

6 For Item No 146 the following item shall be substituted, namely —

"146 IRON or STEEL PIPES and TUBES and fittings therefor, if riveted or otherwise built up of plates or sheets—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 12 per ton, or 10 per cent <i>ad valorem</i> whichever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 35 per ton

7. After Item No 146 the following item shall be inserted namely —

"146A CAST IRON PIPES and TUBES also cast iron fittings therefor that is to say bends boots elbows tees, sockets, flanges plugs valves cocks and the like—	
(i) of British manufacture	10 per cent <i>ad valorem</i>
(ii) not of British manufacture	Rs 57 8 0 per ton

8 For Item No 147 the following item shall be substituted, namely —

"147	IRON or STEEL plates excluding cast iron plates— (a) not fabricated— (i) of British manufacture— not coated with other metals	1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent <i>ad valorem</i> , which ever is higher
	coated with other metals (ii) not of British manu facture	Do 1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 25 per ton.

- (b) fabricated—
 (i) of British manufacture—
 (ii) not of British manu-
 facture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 40 per ton
 Do

9 For Item No 148 the following item shall be substituted, namely —

'148 IRON or STEEL sheets—

- (a) not fabricated—
 (1) not galvanized—
 (i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 11 per ton or 10 per cent *ad valorem* whichever is higher

- (ii) not of British manu-
 facture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 32 per ton

- (2) galvanized—

- (i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 10 per ton or 10 per cent *ad valorem* whichever is higher

- (ii) not of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 40 per ton

- (b) fabricated—

- (1) not galvanized—

- (i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 12 per ton or 10 per cent *ad valorem* whichever is higher

- (ii) not of British manu-
 facture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 35 per ton

- (2) galvanized—

- (i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 11 per ton or 10 per cent *ad valorem* whichever is higher

- (ii) not of British manu-
 facture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 44 per ton

10 Item No 148A shall be omitted

11 For Item No 149 the following Item shall be substituted, namely —

- 149 IRON or STEEL wire other than
 barbed or standard wire
 wire rope or wire netting and
 iron or steel wire nails—
 (i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 25 per ton

- (ii) not of British manu-
 facture

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 60 per ton

12 For Item No 149A the following item shall be substituted, namely —

- 149A IRON or STEEL the original
 material (but not including
 machinery) of any ship or
 other vessel intended for in-
 land or harbour navigation

which has been assembled abroad taken to pieces and shipped for reassembly in India—

(i) of British manufacture

(ii) not of British manufacture

Provided that articles dutiable under this item shall not be deemed to be dutiable under any other item

1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 27 8-0 per ton or 20 per cent *ad valorem* whichever is higher

13 For Item No 150 the following item shall be substituted, namely —

150 IRON or STEEL RAILWAY TRACK MATERIAL

A Rails (including tramway rails the heads of which are not grooved)—

(a) 30 lbs per yard and over and fish plates therefor—

(i) of British manufacture

(ii) not of British manufacture

(b) under 30 lbs per yard and fish plates therefor—

(i) of British manufacture

(ii) not of British manufacture

B Switches and crossings including stretcher bars and other component parts and switches and crossings including stretcher bars and other component parts for tramway rails the heads of which are not grooved—

(a) for rails 30 lbs per yard and over—

(i) of British manufacture

(ii) not of British manufacture

(b) for rails under 30 lbs per yard—

(i) of British manufacture

1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India or 20 per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 10 per ton or ten per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 39 per ton

1½ times the excise duty leviable for the time being on steel ingots produced in British India or 10 per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India or 20 per cent *ad valorem* whichever is higher

1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 11 per ton, or 10 per cent *ad valorem* whichever is higher

(ii) not of British manufacture.	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 43 per ton.
C. Sleepers and sleeper bars, other than cast iron—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India, or 10 per cent <i>ad valorem</i> , which ever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India, or 20 per cent <i>ad valorem</i> , which ever is higher
D. Spikes (other than dog-pikes) and tie-bars—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 13 per ton, or 10 per cent <i>ad valorem</i> , whichever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 30 per ton
E. Dog-pikes—	
(i) of British manufacture.	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> 7 annas per cwt, or 10 per cent <i>ad valorem</i> , whichever is higher
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 2 15 0 per cwt
F. Gibs, cotters, keys (including tapered key bars), distance pieces and other fastenings for use with iron or steel sleepers—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> 7 annas per cwt, or 10 per cent <i>ad valorem</i> whichever is higher
(ii) not of British manufacture.	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 2 15 0 per cwt "

14. Item No. 151 and Item No 152 shall be omitted.

15 For Item No 153 the following item shall be substituted, namely —

"153	IRON OR STEEL STRUCTURES, fabricated partially or wholly not otherwise specified, if made mainly or wholly of iron or steel bars, sections, plates or sheets or the construction of building, bridges, tanks, well curbs, trestles, towers and similar structures or for parts thereof, but not including builders hardware (see Item, No 185 or any of the articles specified in Item No. 59A, 59D, 64, 67, 182 or 230,—	
(i)	of British manufacture.	1½ times the excise duty leviable for the time being on steel ingots produced in British India <i>plus</i> Rs 40 per ton.
(ii)	not of British ma.	

16 For Item No 154 the following item shall be substituted, namely :—

"154 STEEL tinplates and tinned sheets including tin taggers and cuttings of such plates, sheets or tagger—	
(i) of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 88 per ton
(ii) not of British manufacture	1½ times the excise duty leviable for the time being on steel ingots produced in British India plus Rs 59 per ton "

17. For Item No 235 the following item shall be substituted, namely :—

" 235 IRON ALLOYS, viz ferro manganese, ferro-silicon ferro chrome speigelleisen and the like as commonly used for steel making Iron, pig, Iron, rice bowls	Ad valorem	20 per cent	10 per cent
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18 In Item No 236, in the second column,—

- (a) the seventh and eighth entries shall be omitted ,
 (b) in the ninth entry, for the word "FENCING-WIRE" the "WIRE" shall be substituted , and
 (c) the following entry shall be added, namely —"CAST IRON PLATES".

19. Item No 236 A shall be omitted

20 For Item No 237 the following item shall be substituted, namely :—

"237 STEEL INGOTS IRON or STEEL, blooms, billets and slabs, provided that no piece less than 1½ inches square or thick shall be included in this item	Ad valorem	The excise duty leviable for the time being on steel ingots produced in British India, or 20 per cent ad valorem, whichever is higher	The excise duty leviable for the time being on steel ingots produced in British India, or 10 per cent ad valorem, whichever is higher
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THE INSURANCE ACT (IV OF 1938).

(Extracts of a few penal sections of the Act)

PART V.

MISCELLANEOUS

102 (1) Except as otherwise provided in this Act, any insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees

Penalty for default in complying with, or act in contravention of this Act

and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues

(2) Any provident society which makes default in complying with any of the requirements of Part III and any director, managing agent manager, secretary or other officer of the society who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default with fine which may extend to two hundred and fifty rupees for every day during which the default continues

103 (1) Any insurer or any person acting on behalf of an insurer who transacts any class of insurance business in contravention of any of the provisions of section 3 section 6 section 7, section 97 or section 98, or does any one or more of the acts constituting the business of insurance in relation to any such class of insurance business shall be punishable with fine which may extend to two thousand rupees

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub section (1) shall be punishable with fine which may extend to five hundred rupees

Provided that nothing in this section shall apply to the business of re-insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India

104 Whoever, in any return, report certificate balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both

105 Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years

106 If on the application of an insurer or any member of an insurance company or any policy holder or the liquidator of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention

director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part; and the Court shall have all the powers which a Court has under sections 235 and 237 of the Indian Companies Act, 1913,* and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation

107 Except where proceedings are instituted by the Superintendent of this Act, any person who is liable under sub-section (2) of section 41 shall be, instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General of the province where the principal place of business in British India of such insurer is situate to the institution of such proceedings

108 If in any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

109. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act

THE JUDICIAL OFFICER'S PROTECTION ACT, 1850

ACT NO. XVIII OF 1850

[Passed on the 4th April, 1850]

An Act for the protection of Judicial Officers.

For the greater protection of Magistrates and others acting judicially. It is enacted as follows —

1 No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction provided that he at the time, in good faith,

Non liability to suit of officers acting judicially, for official acts done in good faith and of officers executing warrants and orders

believed himself to have jurisdiction to do or order the act complained of, and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same

Notes—The protection afforded to judicial officers rests on public policy and though it is a protection designed not for him to exercise his malice with impunity protection from suit for damages for but see A I R 1931 Oudh 99

(S. B)

A Magistrate is not warranted in convicting and imprisoning a person for disobeying an order, 2 B H C 384

A Judge is privileged in respect of any words relevant to the issue uttered by him, while acting judicially in a case within his jurisdiction although such words convey an imputation upon person not judicially before him *See*—To maintain an action of slander the irrelevancy must be so gross as to afford no room for the hypothesis of honest mistake

A Judge of a Zilla Court has the same immunity in his office as a Judge of one of the superior Courts in England If the act complained against judicial officer is in its nature judicial and within his jurisdiction he is protected even if he has acted maliciously A. I R 1933 All 749

The English letters which a Sessions Judge is directed to forward to the Nizamut Adawlut are judicial proceedings, and are entitled to the same privilege as a judgment delivered in open Court.

Evidence which might be good in support of a plea of justification may in the absence of such a plea be admissible if it tends to prove *bona fide* in writing a privileged communication and to rebut malice where the allegation of malice is traversed—*Ally Karam v Sandys* 1 Boulnois 1

Under this Act where an act done or ordered to be done by a judicial officer in the discharge of his judicial duties, is within the limits of his jurisdiction he is protected whether or not he has discharged those duties erroneously irregularly, or even illegally

For the form or manner—*Ibid* But where the

Act VII of 1850 (Bengal) which functions shall be deemed to be a of 1850' is that for the purpose is to be regarded as judicial

13 Cal 208

The conduct of a malicious Judge can be awarded 7 Bom L R 951 see also 9 C W App 1 The mere absence of *malafides* is no A Magistrate is not protected when he failed to pectly 3 B H C A C 36 8 B H C App 1 When he acts without jurisdiction believing he has jurisdiction he is protected 10 M L J 232 see also L B R (1872 1892) 83 11 W R Cr 19 8 C L J 75 20 B 241 59 P W R 1903 9 Ind Cas 533

are at once executive and judicial If a cannot rely on Act arch 36 C 433=13 takes in good faith 9 Ind Cas 535

A Magistrate who makes a personal search of a house in view of an enquiry under the Criminal Procedure Code acts in the discharge of his judicial functions and may therefore claim the protection of Act XXIII of 1850 39 C 453 (P C) see also 39A 516

THE KHADDAR PROTECTION ACT, 1934

ACT NO VIII OF 1934

(Received the assent of the Governor General on the 13th March, 1934)

An Act to regulate the use of the words 'Khaddar' and 'Khadi' when applied as a trade description of woven materials

WHEREAS it is expedient to regulate the use of the words 'Khaddar' and 'Khadi' when applied as a trade description of woven materials It is hereby enacted as follows —

Short title extent and com- 1 (1) This Act may be called the
mencement Khaddar Protection Act 1934

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

(3) This section shall come into force at once, and section 2 shall come into force in any province on such date as the [Central Government]* may, by notification in the [official Gazette]†, appoint in this behalf

Notes — We have inserted the customary extending clause in clause 1 of the Bill and have made provision by sub clause (3) of this clause for bringing the operative part of the Bill into force in the various provinces by individual action by the Local Government concerned We have revised the definition of *Khaddar* and *Khadi* to make it clear that these terms shall henceforward be properly applicable only to cotton cloth — *Report of the Select Committee*

2 The words 'Khaddar,' and 'Khadi', whether in English or Words *Khaddar* and *Kha* in any Indian vernacular language when
di to be trade description applied to any woven material shall be deemed to be a trade description within the meaning of the Indian Merchandise Marks Act, 1889 † indicating that such material is cloth woven on hand looms in India from cotton yarn hand spun in India

THE LAND CUSTOMS ACT (XIX 1924)

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	4 Establishment of Land Customs Stations and determination of routes	8 Goods not to be passed on cer- ta n days or at certain times
		9 Applicat on of Act XIII of 1878
		10 Operat on of Act VI of 1844 and XXIX of 1857

* In British India the words w th in brackets have been subst tuted by G I Order of 1937 In Burma for these words read the word Governor vide G D Order of 1937

† In British India the words w th n brakts have been substituted by G I Order of 1937 In Burma for the " words read Gaz tle vide G D Order of 1937 IV of 1889

THE LAND CUSTOMS ACT,

ACT NO XIX OF 1924

Received the assent of the Governor General on the 30th September 1924

An Act to consolidate amend and extend the law relating to the levy of duties of customs on articles imported or exported by land from or to territory outside India

Whereas it is expedient to consolidate amend and extend the law relating to the levy of duties of customs on article imported or exported by land from or to territory outside [British India]*, It is hereby enacted as follows —

Short title extent and commencement 1 (1) This Act may be called the Land Customs Act, 1924

[(2) It extends to the whole of [British India] †

(3) It shall come into force on such date as the [Central Government]§ may by notification in the [official Gazette]||, appoint

Definitions 2 In this Act unless there is anything repugnant in the subject or context —

(a) any reference to the passing or import or export of goods 'by land' shall be deemed to include the passing or import or export of goods by any inland waterway constituting a foreign frontier or part of a foreign frontier

(b) 'Chief Customs authority' means the Central Board of Revenue constituted under the Central Board of Revenue Act 1924, and includes in relation to any power or duty which the [Central Government]§ may by notification in the [official Gazette]|| transfer from the Central Board of Revenue [and entrust to a Provincial Government or an officer of a Provincial Government under section 124 (1) of the Government of India Act, 1935 that Government or officer as the case may be]***

(c) 'Collector of Land Customs' means a Collector of Land Customs appointed under section 3

(d) 'Dutiable goods' means any article on which a duty of land customs is leviable by virtue of a notification issued under section 5 of the Indian Tariff Act, 1894

(e) "foreign frontier" means the frontier separating any foreign territory from any part of [British India]††,

* The words with n brackets have been substituted by Act III of 1937 But in 1937 n omitted Order of 1937 by G I Order of vide G B Order

of 1937

| J

1937

..

..

In that behalf

†† In Burma for the words 'British India' read 'British Burma' Vide G B Order of 1937

substituted by C I Order of vide G B Order 1937

the Governor may appoint

(f) "foreign territory" means any territory* which has been declared under section 5 of the Indian Tariff Act, 1894, to be foreign territory for the purposes of that Act, and

(g) "land customs area" means any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under section 3†

3 (1) The [Central Government]‡ may, by notification in the Appointment of Land Customs Officers [official Gazette]§, appoint, for any area adjoining a foreign frontier and specified in the notification, a person to be the Collector of Land Customs and such other persons as he thinks fit to be Land Customs Officers

(2) The [Central Government]‡ may delegate to the Chief Customs-authority any power conferred upon him by sub-section (1), and|| the Chief Customs-authority may delegate to any Collector of Land Customs any power to appoint Land Customs Officers which has been so delegated to it

Establishment of land customs stations and determination of routes 4 The Chief Customs-authority may, by notification in the [official Gazette]§ —

(a) establish land customs stations for the levy of land customs in any land customs area, and

(b) prescribe the routes by which alone goods, or any class of goods specified in the notification, may pass by land out of or into any foreign territory, or to or from any land customs stations from or to any foreign frontier

5. (1) Every person desiring to pass any goods, whether dutiable Permit for goods passing across frontier. goods or not, by land out of or into any foreign territory shall apply in writing, in such form as the Chief Customs-authority may by notification in the [official Gazette]§ prescribe, for a permit for the passage thereof, to the Land Customs Officer in charge of land customs station established in a land customs area adjoining the foreign frontier across which the goods are to pass

(2) Where the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that the goods are free of duty, as the case may be

(3) Any Land Customs Officer, duly empowered by the Chief Customs-authority in this behalf, may require any person in charge of any goods which such Officer has reason to believe to have been imported, or to be about to be exported, by land from, or to, any foreign territory to produce the permit granted for such goods, and any such goods which are dutiable and which are unaccompanied by a permit

* Certain words after this repealed by Act III of 1937 have been omitted

† After this paragraph (b) has been omitted by G I Order of 1937 and G B Order 1937, respectively

‡ In British India the words with brackets have been substituted by G I Order of 1937, vide G B Order of 1937.

In Burma for these words read

1937 and G. B Order of 1937

or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation

Provided that nothing in this sub-section shall apply to any imported goods passing from a foreign frontier to a land customs station by a route prescribed in that behalf

(4) The Chief Customs-authority may, by notification in the [official Gazette]*, direct that the provisions of this section, or any specified provisions thereof, shall not, in any land customs area specified in the notification, apply in respect of goods of any class or value so specified

6 A Land Customs Officer empowered in this behalf by the Chief Customs-authority shall pass free of duty any goods imported or exported by land by any passenger, if he is satisfied that the goods are the passenger's personal baggage in actual use

Penalties 7 (1) Any person who—

(a) in any case in which the permit referred to in section 5 is required, passes or attempts to pass any goods by land out of or into any foreign territory through any land customs station without such permit or

(b) conveys or attempts to convey to or from any foreign territory or to or from any land customs station any goods by a route other than the route, if any, prescribed for such passage under this Act, or

(c) aids in so passing or conveying any goods, or, knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed shall be liable to a penalty not exceeding, where the goods are not dutiable fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offence has been committed shall be liable to confiscation

[(2) where any dutiable goods, or any goods in respect of which a notification under section 19 of the Sea Customs Act, 1878 prohibiting the bringing or taking by land of such goods in 'British India'† or any specified part thereof has been issued, or are passed by land out of any foreign territory and the Land Customs Officer is of opinion that an offence under sub section(1) has been committed in respect of such goods and that the penalty provided in that sub-section is inadequate, he may make a complaint to a Magistrate having jurisdiction

(3) Such Magistrate shall thereupon inquire into and try the charge brought against the accused person and, upon conviction may sentence him to imprisonment of either description for a term which may extend to six months or to fine not exceeding one thousand rupees, or to both and may confiscate the goods in respect of which the offence has been committed]‡

* Substituted in British India by G. I. Order of 1937 But in Burma for these words read the word 'Gazette', vide G. B. Order of 1937

† In Burma for the words 'British India' substitute 'British Burma' vide G. Order of 1937

‡ Added by Act XIX of 1931

8 No goods other than personal baggage or goods belonging to [the Crown]* or mails shall be delivered Goods not to be passed on certain days or at certain times or passed at any land custom station, except with the special permission of the Land Customs Officer in charge thereof,—

(a) on any public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or on any day on which the passage and delivery of goods at such land customs station has been prohibited by the Chief Customs-authority, by notification in the [official Gazette]†, or

(b) on any day except between such hours as the Chief Customs-authority, may, by a like notification, appoint

9 (1) The provisions of the Sea Customs Act, 1878, which are Application of Act VIII of 1878 specified in the Schedule, together with all notifications, orders, rules or forms issued, made or prescribed thereunder shall, so far as they are applicable, apply for the purpose of the levy of duties of land customs under this Act in like manner as they apply for the purpose of the levy of duties of customs on goods imported or exported by sea

(2) For the purpose of such application the said provisions, notifications orders, rules and forms may be construed with such alterations as may be necessary or proper to adopt them for the said purpose, but not so as otherwise to affect the substance thereof, and in particular—

(a) references to bills of entry and to shipping bills, shall be deemed to be references, respectively, to applications for permits to import and applications for permits to export such as are referred to in sections 5

(b) references to a Chief Customs-officer shall be deemed to be references to a Collector of Land Customs

(c) references to a Customs Collector shall be deemed to be references to a Land Customs officer for the time being in charge of a land customs station or duly authorized to perform all, or any special duties of an officer so in charge,

(d) references to a custom-house shall be deemed to be references to a land customs station,

(e) references to a customs-port shall be deemed to be references to a land customs area,

(f) references to a foreign port shall be deemed to be references to foreign territory,

(g) references to goods brought by sea to, and to goods shipped or brought for shipment at, a customs-port shall be deemed to be references respectively to goods brought across a foreign frontier into a land customs area and to goods brought to a land customs station for export,

(h) references to officers of customs shall be deemed to be references to Collectors of Land Customs or Land Customs Officers appointed under this Act,

In Burma for these words read

In Burma for the words within

(i) references to persons on board of any vessel or boat in any port or to persons landing shall be deemed to be references to persons who have entered a land customs area from foreign territory, and

(j) references to 'this Act' shall be deemed to be references to the Sea Customs Act, 1878 as applied for the purposes of this Act or to this Act, as the case may require

[10—Operation of Acts VI of 1844 and XXIX of 1857—*Rep by Act II of 1937, G I Order of 1937 and G B Order of 1937*]

THE SCHEDULE

(See section 9)

Provisions of the Sea Customs Act 1878 which are made applicable for the purpose of the levy of duties of land customs

Sections 4 8 to 10, 21 23 25 26 29 to 30 37 (except the proviso) 38 to 40 Section 88,* section 167 Nos 1 8 9 37 to 40 and 72 to 80 sections 169 † to 170 178 to 181 182 to 184 186 to 197 and 200 to 204

THE LEGAL PRACTITIONERS ACT, 1846

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THE LEGAL PRACTITIONERS ACT, 1846 †§

ACT NO 1 OF 1846

(Received the Governor General's assent on the 7th January 1846)

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company

1 2 & 3 [Repeal of enactments]—*Rep by the Repealing Act, 1874 (II of 1874)*

4 || The office of pleader in the Courts of the East India Company shall be open to all persons of what ever nation or religion Provided that no person shall be admitted a pleader in any of those Courts unless he has obtained a certificate in such manner

* Inserted by Act II of 1937

as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding

5 Provided * that every barrister of any of Her Majesty's Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter

Right of barrister to plead in all Courts
Enactment to cease to have force except for specified purposes

6 * Section 52, Regulation II, 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act

7 * Parties employing authorized pleaders in the said Courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and* it shall

Private agreement between parties and pleaders

not be necessary to specify such agreement in the *vakalatnama*
Provided when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in the section of the Regulation specified in section 6 of this Act and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits

Calculation of pleaders fees out of costs awarded in regular suits

8 * Private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit

Enforcement of private agreements

9 * Persons taking* opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinion*.

Remuneration for opinions

10 * Whenever a pleader has rendered himself liable to a fine in the Court of a Principal Sadr Amin or Sadr Amin, it shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fine

Power of Sadr Amin to fine pleader

Provided that an appeal from all orders imposing such fines shall lie to the Zilla or City Judge, whose decision thereon shall be final

Appeal

11 * The rules applicable to pleaders in Courts of the Zilla and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsifs Courts

Rules applied

12 * Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of

Power of Munsif to fine pleader

* Certain words repealed by Act XVI of 1874

a Zilla or City Judge, it shall be competent to such Munsiff to impose such fine. Provided that an appeal from all orders imposing such fine shall lie to the Zilla or City Judge, whose decision thereon shall be final.

13 * Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsiffs, or before the Village or District Panchayats, or before the Collectors of Zillas under the provisions of Regulations IV, V, VII and XII 1816, of the Madras Code.

THE LEGAL PRACTITIONERS ACT (XX OF 1853)

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SECTIONS

- | | |
|---|--|
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|---|--|

THE LEGAL PRACTITIONERS ACT, 1853 †

ACT NO XX OF 1853

(Received the assent of the Governor General on the 8th December, 1853)

An Act to amend the Law relating to Pleaders in the Courts of the East India Company

WHEREAS it is expedient to amend the law relating to Pleaders in the Court of the East India Company It is enacted as follows —

1 [Repeal of enactments]—*Rep by Act XIV of 1870*

2 No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court may be heard or transacted therein on that day anything in any law or regulation to the contrary notwithstanding

3 Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein whether relating to the language in which the Court is to be addressed or to any other matter

Right of Supreme Court attorneys to plead in all Sadr Courts

* Certain words repealed by Act XVI of 1874

- 4 That part of section 4, Act No I of 1846, which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the

Barristers and attorneys of Supreme Courts not required to produce certificate of character, etc but may plead in all subordinate Courts

office, shall not extend to barristers or attorneys of any of the said Supreme Courts, but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleading therein

THE LEGAL PRACTITIONERS ACT, (XVIII) OF 1879

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THE LEGAL PRACTITIONERS ACT, 1879

ACT NO XVIII OF 1879

(Received & assented to 29th October, 1879)

An Act to consolidate and amend the law relating to Legal
Practitioners

[WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces the Punjab Oudh the Central Provinces and Assam and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit, It is hereby enacted as follows—]*

Preamble

relating to Legal Practitioners in the Lower
Provinces of Bengal, the North-WesternProvinces the Punjab Oudh the Central Provinces and Assam and
to empower each of the Local Governments of the rest of British
India to extend to the territories administered by it such portions of
this Act as such Government may think fit, It is hereby enacted as
follows—]*

Notes—Proceedings under the Act are quasi criminal and are barred by acquittal in previous criminal proceedings 88 Ind Cas 279=26 Cr L J 1111=A I R 1925 Rang 110 The Legal Practitioners Act makes no provision either for transfer of proceedings or for the holding of a preliminary enquiry 92 Ind Cas 896=1926 M W N 466=A I R 1926 Mad 1044 The Act does not merely consolidate previous enactment but the whole law on the subject and it does not merely consolidate the same complete C 1930 All criminal Bom 71

CHAPTER I
PRELIMINARY

1 This Act may be called the Legal Practitioners Act, 1879 and shall come into force on the first day of January 1880

Short title

Commencement

* In Burma the preamble has been omitted by G. B. Order of 1937

Local extent

This section and section 2 extend to the whole of [British India] *

[The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam But any other Local Government]†, may from time to time, by notification in the [official Gazette]‡, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration

Notes —Now read Governors of Lower Provinces of Bengal, United Provinces of Agra and Oudh the Punjab,

Extension of the and the Khanduals b fiction under s 3 (a) Hazaribagh Lohardaga District of Singbhum Lohardaga included a under the power give omissions, and so far only as it relates to Judicial Courts Civil and Criminal, to the

leaders have been extended to Coorg—vide Mysore Gazette 1879, Pt I, p 355 s 3, Chapters II, III, V to VIII and the Second Schedule were extended to Lower Burma, with effect from 16th April 1900 vide Burma Gazette, 1900 Pt I p 326 Section 20 was extended to Burma, vide Burma Gazette, 1908, Pt I p 18 Sections 4 and 41 were extended to Ajmer Merwara vide Gazette of India, 1927, Pt II, p 214

2 Rep by Act I of 1938§

Interpretation clause

3 In this Act, unless there be something repugnant in the subject or context,—

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated

["Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No IX of 1850|| or

Act No XI of 1865 *]**

* In Burma for "British India" read "British Burma" vide G D Order of 1937

† In Burma for the words within the brackets read the words "But the Governor," vide G D Order of 1937

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||
*
2

fixed admitted enrolled issued, shall be deemed to be respectively made, prescribed, issued, sanctions given and enactment hereby repealed
All references made to any enactment hereby repealed in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.
References to repealed enactments

! See now the Presidency S. H. C. of 1892)

G D High Court has been substituted by court subordinate to the

"Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their Revenue office
 tenants or agents

{ 'Legal practitioner' means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue-agent }*
 Legal practitioner
 tout † 'tout' means a person—

(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business, or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business, or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-offices or railway stations, landing stages, loading places or other places of public resort.

Tout—Looking after other people's cases and writing petitions for them cannot by themselves make a person a tout within the definition of this section. It must be

Legal Practitioner—Under the Statute law of British India a woman though otherwise qualified was not entitled to be enrolled as a Legal Practitioner 24 C L J 382=21 C W N 75 (F B) But this ruling has now been made obsolete by Act 23 of 1923 whereby no woman is disqualified by reason of her sex

CHAPTER II †

OF ADVOCATES, VAKILS AND ATTORNEYS

4 Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Advocates and Vakils letters patent constituting such Court, or "under section 41 of this Act," or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents, and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court (or, in the case of a

* In Burma the following definition of Legal Practitioner has been substituted by G. O. Order of 1937 " 'Legal practitioner' means an advocate of the High Court or a pleader "

High Court in respect of which the Indian Bar Council Act, 1926, is in force, subject to rules made under that Act),* in any High Court on whose roll he is not entered, and in any revenue office

Provided that no such vakil "or pleader"† shall be entitled to practise under this section before a judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town

ales away the right of audience
court 2 M W N 509 The word
plead and act, 4 Pat 766 Vakils
Presidency town of Madras 48 M
section is not intended to override

the special provisions relating to insolvency in the presidency towns 48 M 331

5 Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office

The High Court of the Province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

Notes —When an attorney has employed a counsel under the authority given to him by the party in the retainer filed in the Court he is bound to pay the fees paid to the counsel on taxation. It is only when the client has instructed the attorney not to brief a particular counsel that the client would be under no obligation to pay fees paid to particular counsel 52 C L J 197=A I R 1930 Cal 651 (F B)

CHAPTER III

OF PLEADERS AND MUKHTARS

6 The High Court may, from time to time, make rules consistent with this Act as to the following matter (namely) —

Power to make rules as to qualifications, etc of Pleaders [and Mukhtars] ‡
() persons
to be re-offices
situate [and, in
the case of a High Court not established by Royal Charter, 'in respect of which the Indian Bar Councils Act, 1926, is not in force' § of such Court,]†

[(b) the qualifications, admission and certificates of proper persons to be Mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter "in respect of which the Indian Bar Councils Act, 1926 is not in force" § of such Court,]†

* Substituted by Act 38 of 1926

† Added by Act I of 1903

‡ The words within brackets have been omitted in Burma by G B Order of 1937

§ Inserted by Act 33 of 1926

(c) the fees to be paid for the examination and admission of such persons, and

(d) suspension and dismissal of such pleaders [and mukhtars]*

Publication of rules—

All such rules shall be published in the [official Gazette]†, and shall thereupon have the force of law [Provided that, in the case of rules made by High Court not established by Royal Charter, such rules have been previously approved by the Local Government]*

7 On the admission, under section 6, of any person as a pleader [or mukhtars]*, the High Court shall cause a certificate signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorising him to practise up to the end of the current year in the Courts, and, [in the case of a pleader also]* the revenue offices specified therein

At the expiration of such period the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court from time to time, appoints in this behalf

On every such renewal, the certificate then in possession of such pleader [or Mukhtar]* shall be cancelled and retained by such Judge or officer

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court

[Provided that on the admission as a pleader of any person who has been previously entered as a Vakil or Attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practise permanently in the Courts and in the offices specified therein and the certificate so issued shall not require to be renewed under this section]‡

8 Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue office mentioned therein [and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted]*, and subject to such rules consistent with

Pleaders on enrolment may practise in Courts and revenue offices

* The words within brackets have been omitted in Burma by G B Order of 1937

† In British India the words within brackets have been substituted by G B Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

‡ This proviso to s 7 was added by Act I of 1908 but it is omitted in B Order of 1937

this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

Appellate Jurisdiction—The words 'appellate jurisdiction' as used in this section denote the ordinary as distinguished from the extraordinary appellate jurisdiction of the Court 24 A 348 (F B)

[9 Every mukhtar holding a certificate issued under section 7
Mukhtars on enrolment may practise in Courts may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly, and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal procedure*) appear, plead and act in any such Criminal Court and any Court subordinate thereto]†

Mukhtar—A mukhtar holding a mukhtarnama authorising him to act in a case may perform any act which a mukhtar may do in the course of a case 10 W N 11 A ed or tendered by a mukhtar but neither looking after a regular appeal and giving aid not necessarily amount to practising L R App 18=18 W R Cr Rule 27 a person practising as a mukhtar stands t do so in his professional capacity, he Fraud apart a loan to a *pardanashin* rate of interest the security being ample on which the contract for such rate of A 215 P C The High Court for the North Western Provinces has no jurisdiction to revise an order of the Commissioner of Kumhoan refusing a certificate to practise in the Court of the Commissioner A W N 1892 236

10 Except as provided by this Act or any other enactment for the time being in force, no person shall No person to practise as pleader or mukhtar unless qualified practise as a pleader [or mukhtar]† in any Court [not established by Royal Charter]† unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate

[Provided that persons who have been admitted as Revenue-agents before the first day of January 1880 and hold certificates, as such under this Act in the territories administered by the Lieutenant-Governor of Bengal may be enrolled in manner provided by section 9 in any Revenue agents may appear and act in Munsifs Courts in suits under Bengal Act VIII of 1869 Munsif's Court in the said territories and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869 (to amend the Procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents]†

* See now the Code of Criminal Procedure (Act V of 1893)

† In Burma the words within brackets have been omitted by G B Order of 1937

Notes—Acceptance of vakalatnama need not be in writing 5 C W N 816 Vakalat nama from the attorney of a person is *prima facie* evidence that it proceeds from him 5 C W N 353 When there is power given in vakalatnama a general or special power of attorney is not necessary 3 C L R 13 An admission on point of law does not bind the client 3 C W N 272 27 C 156 (P C) It is the pleaders duty to make themselves acquainted with the order passed by the Court 27 C 599—4 C W N 237 Where a pleader is appointed a Subordinate Judge he is not bound to engage another pleader to conduct the case in which he was previously engaged 23 B 937 Service of notice on pleader is good service even if he refuses to accept the same 7 C C 303

Appointment of pleaders—Mukhtars could appoint pleaders on behalf of their principal
unconditional
240 (F B)

dismissal without misconduct on his part or after the close of the business is at liberty to take sides against his former employer provided always that he has no secrets to carry with him that can be used to his former client's prejudice 12 C P L R 35 12 B 85 L B R (1893-1900) 18

Authority of pleader to bind a client by statement—In matters relating to the conduct of a suit a pleader can act on behalf of his client even without express authority 3 Bom L R 467 Admission by a Vakil binds his client 9 W R 48, 2 M I A 253 9 W R 35 But the opinion expressed by a Vakil in the course of arguments adversely to a claim 18 M 73 See also 6 A 406 Pleadings—Pleader has special authority to bind his client by statement made in the course of arguments not a general power of authorisation to that end 5

A Vakil can withdraw a suit by virtue of his vakalatnama 5 W R 80

[11] Notwithstanding anything contained in the Code of Civil

Power to declare functions of Mukhtars

Procedure,* the High Court may, from time to time, make rules declaring what shall be deemed to be the functions powers and

duties of mukhtars practising in the subordinate Courts, and in the case of a High Court not established by Royal Charter in such Court it

12 The High Court may suspend or dismiss any pleader [or mukhtar]† holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader

Suspension and dismissal of
Pleaders and Mukhtars convicted
of criminal offence

may suspend or dismiss any pleader [or mukhtar]† holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader

[or mukhtar as the case may be]t

Notes—The High Court has jurisdiction under s 12 of the Legal Practitioners Act to take disciplinary action against a pleader who has been convicted of a criminal offence.

* See now the Code of Civil Procedure (V of 1908)

† The words within brackets have been omitted in Burma by G. D. Order of 1937.

Cal 771 Conviction of criminal offence involving moral turpitude is sufficient basis for order of suspension of pleader or mukhtar but not of vakil who must be dealt with under Letters Patent A I R 1931 Oudh 161 F B , A I R 1931 Pat 208 , A I R 1931 Pat 369 (F B) , 13 Rang 797 Action under this section is taken not by way of punishment but on consideration whether he should be allowed to continue practice A I R 1931 Nag 33 Enquiring into professional misconduct should not be entered without grave and reasonable cause 33 Cr L J 260=1931 A L J 678 "Defect of character" includes also such defect in pleader's character which renders him unfit to be a member of his profession A I R 1933 Cal 731 , see also A I R 1931 Pat 869 (F B) Repetition of improper conduct must be dealt with severely A I R 1931 Pat 369 (F B) Criminal offence means offence under Penal Code or any act or omission punishable by law for time being in force *Ibid* Pleader sent to jail for refusing to give security under s 107, Cr Pro Code, cannot be said to be convicted of criminal offence *Ibid* Punishment for contempt of Court committed by pleader personally is no bar for professional punishment A I R 1933 251=55 A 148 Application for renewal of certificate by pleader convicted in civil disobedience movement must be treated as application for admission A I R 1931 Pat 369 (F B) Habitual and wilful breaking of law implies defect of character justifying dismissal from practice A I R 1934 Cal 242 Where an advocate is struck off the rolls of Advocates for having offended against criminal law, he cannot be re-admitted to practice 164 Ind Cas 764=35 Cr L J 1010=A I R 1934 Lah 251 (S B) , see also 59 M 732=A I R 1936 Mad 318 No distinction on principle can be made between political offences and other kinds of law breaking 38 C W N 276 see also A I R 1934 Cal 808=59 C L J 410=152 Ind Cas 913 Convictions under s 17 (1) of Criminal Law Amendment Act and s 124 A and 153 A and 178 I P Code entail severe action as they undoubtedly imply defect of character in a legal practitioner 159 Ind Cas 661=A I R 1935 Cal 742 , see also 59 M 732=162 Ind Cas 414=37 Cr L J 571=A I R 1936 Mad 318=70 M L J 408 (F B) Pleader convicted of criminal offence should be struck off proper where Code *Ibid*

13 * The High Court may also, after such inquiry as it thinks

Suspension and dismissal of Pleadors and Mukhtars guilty of unprofessional conduct fit, suspend or dismiss any pleader [or mukhtar]† holding a certificate as aforesaid—

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognised agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative, or friend, authorised by the party to give such instructions, or

(b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business, of himself or any other pleader [or mukhtar] † or

(d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader [or mukhtar] † through, or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given or

(e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(f) for any other reasonable cause

* This section has been substituted by the Legal Practitioners Act (VI of 1896) s 2

† In Burma the words within brackets have been omitted by G. D. Order of 1937

Provided that where the party is—

(a) a pardanashin woman, or

(b) unable for any sufficient cause to instruct the pleader in person

Nothing in this section shall make a pleader liable to suspension or dismissal merely by reason that he has taken instructions from a relative or friend authorised by the party to give such instructions and not receiving any remuneration in respect thereof

Allahabad High Court in respect of their profession or other misconduct 1930 A L J 407=A I R 1930 All 225 (F B)

Object—The object of this Act was not to control the privileges which had always they had but to control of bringing them under I might not be at liberty locate as a party makes taken under discipli J 778 Enquiry is of quasi-criminal character Disciplinary action against pleader is not by way of punishment A I R 1933 Sind 65

Clause (a)—Taking instructions does not include receiving casual information in the course of a trial G M L J 142 This clause does not prohibit a pleader from acting without instructions but only from acting on instructions from a person who is not his client's agent or near relative 1 Ind Cas 669 Taking instructions from unauthorised person 1930 A L J 1016

Clause (b)—Mukhtars writing an objectionable letter to the presiding officer of a Court comes within the provisions of this clause 136 P L R 1901 9 P R 1922

without disclosing that a previous bail application had been dismissed the pleader is guilty of professional misconduct even though the first dismissal did not bar the filing of a second application 69 Ind Cas 442=23 Cr L J 714 Where a pleader was pursued vindictively by a client

kind against the pleader all of pay the costs of the petitioner accepts a brief against a counsel with him confidentially his conduct does not amount to professional misconduct but he should not be allowed to appear against the party 8 Rang 446=A I R 1930 Rang 355 Advocates and pleaders should avoid tampering with witnesses of other side 1929 M W N

make charges against a has no reasonable pro M L J 170 (F B)

he has already appeared not as to defendant in p is contempt Pleader tempt Ibid It cannot leaves his money bus clerk does for purpose unprofessional conduct

there must be definite retainer with fee paid or confidential L J 55=A I R of clients is professional to share property in significant amounts to 142 Ind Cas 689

Mortgage at Rs 3 per month at monthly rents for securing fees amounts to professional misconduct A I R 1933 Pat 219 (S B) 16 P L T 231=156 Ind Cas 889 was held to be no professional sign notice to him is guilty of misconduct who acts only as professional the roll A I R 1937 Pat 658 16 Pat 21 his client for a considerable demands but intentional permission is guilty of 2 M L J 160 (F B) = 3 conduct involving moral = A I R 1934 Lah 251 malice and ill will amount 1934 Cal 723 See 15 P of his client A I R 1934 Pat 309 When cases of perjury by members of the legal profession are discovered the members concerned deserve the most severe punishment which the High Court can give in the exercise of its disciplinary jurisdiction on the legal profession A I R 1935 Pat 249 (S B) 16 P L T 231=156 Ind Cas 889 A pleader who gives his client false information that a certain order has been passed by a Court when no such order has been passed at all is guilty of fraudulent and grossly improper conduct in the discharge of his professional duty 157 Ind Cas 998=86 Cr L J 1271=39 C W N 283=A I R 1935 Cal 547 Where a mukhtar standing bail for conceals (F B) by a mukhtar for which 1936 Cr L J 1001

Clause (c)—The *munshia* (clerk's fee) does not mean the fee paid or payable to a pleader for his services within the term of this clause Paying wholly or in part by a pleader is not objectionable under of any previous arrangements between former of clients for the latter 23 whether the conduct of a pleader falls under is of such a description as shows 732=26 C W N 589 A letter written by a thy to a Judge and charging him with having passing unfavourable orders to the practitioner

Clause (d)—A letter by a High Court asking the latter to send up cases to him is culpable under s 36 of the Act and High Court suspend the pleader as his conduct amounts to the Letters Patent of March 17 1866 17A

practitioner cannot represent conflicting interest or undertake the discharge of inconsistent duties 37 C L J 48 72 Ind Cas 22 It is a well recognised rule of etiquette in the legal profession that no attempt should be made to advertise oneself directly or indirectly A I R 1934 All 1067 (S B)

Clause (f)—The words other reasonable cause are not restricted to matters *ejusdem generis* with the matters mentioned in clauses (a) to (e) 26 M 448 6 M L T 253 (F B) A I R 1937 Rang 345=38 Cr L J 1087 Each of the

endeavours to get the client to accept a less amount than that for which he is liable is not guilty of gross improper conduct in the discharge of his professional duty 5 A L J 126 Pleader who after drawing money from the Court does not pay it to his

recklessly sign vakalatnamas without making proper note thereof, is very nearly approaching misconduct on the part of a pleader 18 Ind Cas 268 (F B) The rules

go between for bringing police is punishable under this clause 21 C W N 516 The conviction of a pleader under s 6 of the Town Nuisance Act for using his office as a common gaming house implies a defect in character which unfit him to be a pleader within the meaning of s 12 of the Legal Practitioners Act 42 M 111 A pleader who intimidates a witness in order to prevent him from giving evidence in Court is guilty of professional misconduct 40 Ind Cas 819 (F B) A legal practitioner who writes a letter to a judicial officer asking him to decide a case in a particular manner is guilty of grossly improper conduct within this clause 3 P W R Cr 1918 A mukhtar can be proceeded against under this clause for writing abusive letters to a Magistrate 17 A L J 1050-52 Ind Cas 798 Where a pleader advises the guardian of a minor to give money to the sureties he does not commit an offence under this clause 38 M L J 58 See cases reported in 21 C W N 755 2 Lah L J 41 If a pleader in pursuance of a concerted movement to boycott the Court deliberately abstained from attending it he is guilty of a course of conduct which cannot be justified or tolerated 26 C W N 550-35 C L J 403 This clause is not confined to acts done in a professional capacity and where a pleader was guilty of organising a determined resistance to the payment of a tax with the result that the Magisterial authorities had to bind him over to keep the peace, there is sufficient foundation for disciplinary action under this section 49 C 815 The omission of a pleader to examine records or verify statements made by his client, is not grossly

engaged in trade, because
shown that the quantum
of punishment is unreasonable and excessive 13 A 93 Examining copies of record only before certifying is not grossly improper conduct 17 W R 838 For instances of improper conduct vide W R Mis 5 25 W R 866, 12 B 78, 7 C W N 797, 6 M L T 329 10 J 1 W R 1910 6 W R 67 W R 1864 Mis 22, 33 B 252, 27 B 423 12 C L J 625 23 M L J 114, P C 14 C W N 521 (P C), 20 M L J 494 Any charge of misconduct against a pleader or mukhtar holding a certificate under Act XII of 1866 other than a recorded conviction of 8 criminal offence, must be made and substantiated 7 W R 316 When conduct is charged against a pleader of any subordinate Court which if proved would amount to an offence such conduct should be made the ground for a criminal prosecution and not simply enquired into as improper conduct Dismissal of a pleader after acquittal is improper 24 W R Mis 22 Suspension of pleader before enquiry is also improper 24 M 83 The enquiry under

of a quasi criminal character, the conduct alleged against a pleader assent of client in pursuance of a misconduct 25 Cr L J 1352-2= endant accepts brief for plaintiff here mukhtar gave false evidence on behalf of client suspension for one year was held inadequate A I R 1934 Pat 142 (S B) As regards meaning of 'any other reasonable cause' vide 34 C L J 530-36 C W N 231 law

by pleader in professional c
from Court money belonging,

who is more or less
instantiate his allega-
tion to submit himself

1920 L. J. 117

police in the course of an
in the witness box in the
1929 Cr. O. 441

tions already given in the other cases and
procedure adopted in the enquiry was wholly ill

A pleader should not induce a *pesher* of the
filed in the Court to the pleader's house for the inspection of his clients A. I. R. 1943
Pat 338 (S. B.)

It is improper for a practitioner who evidently intends all along to appear as a witness
for a party to conduct the case on his behalf 117 Ind. Cas. 66

Pleader not attending Court on account
section if he has got no business in Court on the

Person approving of conduct of person comm-
is not fit to hold office of pleader A. I. R. 1931 1340

Section 13 (f) is not confined to acts done by pleader in professional capacity Person
proclaiming or practising civil disobedience cannot be allowed to be part of machinery of
Court A. I. R. 1931 (F. B.) 33

Re instatement—The High Court has jurisdiction in the exercise of its general power
of superintendence over pleaders to reinstate on the roll and to readmit to the office
of a pleader a legal practitioner who had been struck off the roll for professional miscon-
duct 166 Ind. Cas. 628-38 Bom. L. R. 1161=A. I. R. 1937 Bom. 48 But in such
cases of reinstatement the nature of the offence or misconduct for which he was
disbarred the length of time which has elapsed since his dismissal the extent to which
he has been tried in other walks of life the opportunities he had of acting honestly in the
face of temptations and the opinions of respectable persons who have had personal
experience of his honesty are important determining factors 166 Ind. Cas. 618-33
Cr. L. J. 296 1936 A. L. J. 1936 A. I. R. 1937 All. 50 (F. B.) see also A. I. R. 1936
Rang 368

There is inherent power in the High Court to restore a pleader whose name has been
struck off the rolls although there is no express provision for a review of an order made
under the Act 411 391 (F. B.)

nk he is not fit for responsible duties of
236-A I. R. 1934 Rang 156=1934
nd 147 T. A. C. 1937-25 Cr. T. J.

453-15 P. L. T. 63-A. I. R. 1934 Pat 142 (S. I.)
serious charge against a party to a litigation unless
relevant evidence upon which it accepted can
hold the allegations suit A. I. R. 1935 All. 425 (K)
Crs 1013 see also 57 A. 573=159 Ind. Cas.
All. 117

14 If any such pleader [or mukhtar]* practising in any

subordinate Court, or in any revenue
office is charged in such Court or office
with taking instructions except as afore-
said, or with any such misconduct as
aforesaid the presiding officer shall send
him a copy of the charge and also a notice that, on a day to be
taken into consideration
served upon the pleader [or
the day so appointed

On such day, or on any subsequent day to which the enquiry may
be adjourned the presiding officer shall receive and record all
evidence properly produced in support of the charge or by the
pleader [or mukhtar]* and shall proceed to adjudicate on the
charge

* The words within brackets have been omitted in Burma by G. B. Order of 1937.

If such officer finds the charge established and considers that the pleader [or mukhtar]* should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof and shall report the same to the High Court and the High Court may acquit, suspend or dismiss the pleader [or mukhtar] *

Any District Judge, or with his sanction any Judge subordinate to him any Judge of a Court of Small Causes of a Presidency town † any District Magistrate, or with his sanction any Magistrate subordinate to him and any Revenue authority not inferior to a Collector or with the Collector's sanction any Revenue-officer subordinate to him, may pending the investigation and the orders of the High Court suspend from practice any pleader [or mukhtar]* charged before him or it under this section

Every report made to the High Court under this section shall—

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge

(b) when made by a Magistrate subordinate to the Magistrate of the District ‡ be made through the Magistrate of the District‡ and the Sessions Judge

(c) when made by the Magistrate of the District‡ be made through the Sessions Judge

(d) when made by any Revenue officer subordinate to the Chief Controlling Revenue authority, be made through such Revenue authority as the Chief Controlling Revenue authority may, from time to time, direct

Every such report shall be accompanied by the opinion of each Judge Magistrate or Revenue authority through whom or which it is made

Object—This section is provided for the purpose of giving the High Court the benefit of the District Judge's opinion and also as an additional protection to the person whose case might be under consideration. The proceedings under the section are quasi criminal in the sense that may result in penalties. It is open to the pleader in such a case to say

a matter referred by him to the High Court. The High Court alone has the power to give direction as to the award of costs incurred between the date of the petition and the date of reference to the High Court. 27 Ind Cas 125. The enquiry under this Act cannot be delegated or transferred to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed. 1 Pat

* The words within brackets have been omitted in Burma by G. E. Order of 1937

Practitioners Act (IX of 1884),

Criminal Procedure (Act V

erty without reference
of misconduct or not
conduct in the course
503=38 Cr L J
charge of criminal
nal prosecution, and
A I R 1934 Cal
nd reasonable doubt
conduct of a pleader
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ig to the same
is 16=A I R
conduct because
fees have not
dings against a

pleader under this section is the presiding officer of the Court or office in which the
tried is alleged to have
the High Court under
revenue agent is pleader
the first clause of this

section cannot be construed to mean the Court in which the misconduct is alleged
to have been committed 72 Ind Cas 52=24 Cr L J 409 Where certain
offences are alleged to have been committed by a mukhtar before a sub-divisional
Magistrate the Sessions Judge of the District has no jurisdiction to take action under this
section (1923) P H C C 45=71 Ind Cas 703 A Court acting under this section is not
restricted in ordering an enquiry to offences mentioned under clauses (a) and (b) of this
section A I R 1924 Pat 131 Altering survey number on plot after filing it in Court

Ind Cas 848 The
iminal proceeding,
ial case 33 Ind
ion of the charge
1 1926 M W N
ake evidence before
examined in the
in proceedings in
is same as that

again convicted removal from roll is justified A I R 1932 Pat 300 (3 B)
Asking client to give gratification to Court even after conclusion of case is misconduct
A I R 1932 Pat 356 (S D) 14 recommending officer need
A I R 1932 Cal 370 Integrity
putation on integrity of Court

Where names are added in the vakalatnama after execution, such additions are
not made from improper motives
is not an offence under this sec
its disciplinary jurisdiction even
e trial Court where the occur
o power to refer it It would
nquiry (1922) P 608 It
the acceptance of vakalat
e accepted a vakalatnama
the Court accepted his ex
of justice would be met
Ind Cas 417 Where the
of a pleader in his practical
he should be tried under

not know, is guilty of professional misconduct 57 Ind Cas 818 The fact that the
pleader concerned had become a vakil of the new High Court at Lahore since the action
was taken under s 14 by the lower Court could not affect the jurisdiction of the Court
152 P R 1919

The provision of section 14 indicates that ordinarily an enquiry mentioned in other section should be made by the presiding officer of the Court where the misconduct has been alleged to be committed. 6 A L J 1250 = 1 I R 1925 All 395 (S B). For a proper reference to the High Court the formalities required by this section ought to be fulfilled and in the absence of the formalities being strictly complied with the reference is no valid reference. 27 A L J 1012 119 Ind C 712 1 I R 1929 All 655 F B

15 The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit

Power to call for record in case of acquittal under section 14

Notes—This section applies to proceedings in which an adjudication has already been made by a subordinate judicial officer and the High Court is of opinion after calling for the record and studying the papers that the adjudication is, *prima facie* wrong. A I R 1937 Mad 67 1937 M W 469 = 16 L W 593

***16** Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to

Power to make rules for mukhtars on appellate side of High Court

the following matters (namely) —

(a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court,

(b) the fees to be paid for the examination and admission of such persons,

(c) the security which they may be required to give for their honesty and good conduct,

(d) the suspension and dismissal of such mukhtars, and

(e) declaring what shall be deemed to be their functions, powers and duties,

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees, and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction

CHAPTER IV

OF REVENUE AGENTS

Power to make rules as to qualifications etc. of revenue agents

***17** The Chief Controlling Revenue authority may, from time to time, make rules consistent with this Act as to the following matters (namely) —

(a) the qualifications, admission and certificates of proper persons to be revenue-agents

(b) the fees to be paid for the examination and admission of such persons,

(c) the suspension and dismissal of such revenue-agents, and

(d) declaring what shall be deemed to be their functions, powers and duties

Publication of rules

All such rules shall be published in the local official Gazette, and shall thereupon

have the force of law

* These sections have been omitted in Burma by G. B. Order of 1937

ling under this Act, against him under suspend any pleaider spend or dismissed. only where in the pose that a pleaider y without reference misconduct or not. nduct in the course s. 503=33 Cr. L J. charge of criminal nal prosecution, and A. I. R. 1934 Cal nd reasonable doubt conduct of a pleaider who had already taken instructions from defendant and received his confidence in the not withstanding that referring to the same Ind. Cas 16=A I R nal misconduct because fees have not dings against a fee in which the ned is alleged to have the High Court under revenue agent is *ultra* the first clause of this section cannot be construed to mean the Court in which the misconduct is alleged to have been committed 72 Ind. Cas 52=24 Cr. L J. 409. Where certain offences are alleged to have been committed by a mukhtar before a sub-divisional

respects a criminal case 93 Ind it this consideration of the charge been committed 1926 M. W. N. the Court may take evidence before witnesses shall be examined in the it is material even in proceedings in

presence of the pleaider 31 C. W. N. 551 Section 14 is material even in proceedings in revenue office A. I. R. 1933 Cal 314 Standard of honour of mukhtar is same as that of vakil or barrister A. I. R. 1932 Pat 289 (S. B.) Where suspended pleaider is again convicted, removal from roll is justified A. I. R. 1932 Pat 300 (S. B.) Asking client to give gratification to Court even after conclusion of case is misconduct A. I. R. 1932 Pat 356 (S. B.) In referring case under s. 14 recommending officer need A. I. R. 1932 Cal 370 Imputation on integrity of Court

after execution, such additions are altogether improper yet it is not grossly improper when not made from improper motives. 17 C. W. N. 328 False admission of improper conduct is not an offence under this section 16 C. L. J. 224. The High Court would exercise its disciplinary jurisdiction even if the Court where the occurrence took place had no power to refer it. It would be an inquiry. (1922) P. 608. It is the acceptance of vakalat by the Court accepted a vakalat by the Court accepted his ex- of justice would be met Ind. Cas. 417. Where the of a pleaider in his practical he should be tried under whom he does the fact that the once the action of the Court.

rily an enquiry mentioned in other
 is Court where the misconduct has
 I R 1918 All 336 (S B) For a
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is no valid refer nce 27 A I J 101. 118 Ind C 712 A I P 1929 All 655
 F B

15 The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court may call for the record and pass such order thereon as it thinks fit

Power to call for record in
 case of acquittal under section
 14

Notes—This section applies to proceedings in which an adjudication has already been made by a subordinate judicial officer and the High Court is of opinion after calling for the record and studying the papers that the adjudication is *prima facie* wrong A I R 1937 Mad 672=1937 M W N 460=46 L W 599

***16** Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to

Power to make rules for mukhtars on appellate side of High Court

the following matters (namely) —

(a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court,

(b) the fees to be paid for the examination and admission of such persons,

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such mukhtars, and

(e) declaring what shall be deemed to be their functions, powers and duties,

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees, and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction

CHAPTER IV

OF REVENUE AGENTS

Power to make rules as to qualifications, etc., of revenue agents

***17** The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act as to the following matters (namely) —

(a) the qualifications, admission and certificates of proper persons to be revenue-agents,

(b) the fees to be paid for the examination and admission of such persons,

(c) the suspension and dismissal of such revenue-agents, and

(d) declaring what shall be deemed to be their functions, powers and duties

Publication of rules

All such rules shall be published in the local official Gazette, and shall thereupon

have the force of law

* These sections have been omitted in Burma by G B Order of 1937.

***18** On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue-
 Certificates to revenue agents authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf to be issued to such person, authorising him to practise up to the end of the current year in such revenue offices as may be specified therein

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue authority or by any other officer authorised by such Authority in that behalf

On every such renewal the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue authority

***19** Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue authority and subject to such rules as the Chief Controlling Revenue-authority may from time to time, make in this behalf the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue office subordinate thereto

***20** Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue office unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate

Provided that any person duly authorised in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Local Government in this behalf transact all or any business in which his principal may be concerned in any revenue-office

The sanction mentioned in this section may be general or special and may at any time be revoked or suspended by the Authority or officer granting the same

***21** The Chief Controlling Revenue authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue agent

***22** The Chief Controlling Revenue authority may also, after such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

* These sections have been omitted in Burma by G. B. Order of 1931

† S. 22 has been substituted for the original by the Legal Practitioners Act (N) of 1906. * 3

(a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or

(c) who directly or indirectly, procures or attempts to procure the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36 or

(e) for any other reasonable cause

***23** If any revenue-agent holding a certificate issued under this

Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of

such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge

If the officer or Munsif finds the charge established and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue authority, and such Authority shall proceed to acquit, suspend or dismiss him

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any revenue-agent charged before him under this section

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case

***24** The Chief Contr " " "

Power to Chief Controlling Revenue authority to call for record

or the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit

CHAPTER V.

OF CERTIFICATES

25 Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, "and of such description as the [Provincial Government]* may, from time, to time prescribe"†

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed

[‡Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorising, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader]§

26 When any pleader, [mukhtar or revenue-agent]§ is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same

* Dismissed practitioners to surrender certificates

CHAPTER VI

OF THE REMUNERATION OF PLEADERS, [MUKHTARS AND REVENUE AGENTS]§

[[**27.** The High Court shall, from time to time fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar or attorney upon all proceedings established by Royal Charter, Courts, "and in respect of the fees of his adversary's revenue-agent appearing pleading or acting under section 10"¶

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar or revenue-agent.

* In British India substituted by G I Order of 1937 In Burma for these words read the word Governor, vide G B Order of 1937

† In s 25 the words quoted have been inserted by the Legal Practitioners Act (IX of 1894) s 5

‡ In s 25 the words quoted have been inserted by the Legal Practitioners Act (IX of 1894) s 5

§ In s 27 the words quoted have been inserted by the Legal Practitioners Act (IX of 1894) s 5

Tables of the fees so fixed shall be published in the local official Gazette. Nothing in this section applies to the agents mentioned in the proviso to section 20.]

Notes—This section has no reference to the fees payable by a party to his own advocate, pleader or vakil, the payment is regulated by agreement between the parties 15 C. L. J. 600=17 C. W. N. 45.

The rules framed under this section, which authorises the Court to allow a daily fee for

Cas. 110 BURMA C. W. N. 300.

28 Rep. by Act 21 of 1926

29. Rep. by Act 21 of 1926.

30. Rep. by Act 21 of 1926

31. Rep. by Act 21 of 1926.

CHAPTER VII.

PENALTIES

32. Any person who practises in any Court [or revenue office]* in contravention of the provisions of section 10 [or section 20]* shall be liable, by order of such Court [or the officer at the head of such office],* to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to practise in such Court [or office],* and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On persons illegally practising as pleaders, mukhtars or revenue agents

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, [mukhtar or revenue-agent],* whilst he has been contravening the provisions of either of such sections

33 Any pleader, [mukhtar or revenue-agent]* failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months

34 Any pleader, [mukhtar or revenue-agent],* who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practices as a pleader [mukhtar or revenue-agent]* ,

On suspended or dismissed practitioner practising during suspension or after dismissal.

* In Burma omit the words within brackets, vide G. B. Order of 1937.

any Court or revenue office, shall be liable, by order of such Court or the officer at the head of such office to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months

35 Every order under sections 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority

Notes—Revision lies against an order passed without giving applicant opportunity of appearing and being heard A I R 1931 Nag 187=27 N L R 398

36 (1) [Every High Court],* District Judge [Sessions Judge],* District Magistrate, [and Presidency Magistrate]† every Revenue-officer not being below the rank of a Collector of a District, [and the Chief Judge of every Presidency Small Cause Court]‡ (each as regards their or his own Court and the Courts, if any, subordinate thereto,) may frame and publish lists of persons proved to their or his satisfaction 'or to the satisfaction of any subordinate Court as provided in sub-section (2A) † by evidence of general repute or otherwise, habitually to act as touts and may, from time to time, alter and amend such lists.

Explanation—'The passing of a resolution declaring any person to be or not to be a tout, by a majority of the members present at a meeting specially convened for the purpose, or an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section †

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion

‡ (2A) Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an enquiry in regard to such persons, and the subordinate Court shall thereupon hold an enquiry into the conduct of such persons and after giving each such person an opportunity of showing cause as provided in sub section (2), shall report to the authority which has ordered the enquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout, and that authority may include the name of any such person in the list of touts framed and published by that authority

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard'

(3) A copy of every such list shall be kept hung up in every Court to which the same relates

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list

* In Burma for 'every High Court substitute The High Court and every', after 'sessions Judge insert and vide G B Order of 1937

† In Burma the words within brackets have been omitted by G B Order of 1937

‡ Inserted by Act XV of 1926

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (c) and section 22 clause (d)

* (6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or both "

Notes—Under this section there should be legal evidence that the individual is a tout 12 M L T 259, 24 C W N 1074 The order under clause (4) is not a judicial order and is not open to revision by the High Court 12 M L T 411 13 S L R 212 120 P L R 1909 An order under this section can only be made by the authority mentioned in the section upon evidence recorded by itself 24 C W. N 1074 (1919) Pat 273 16 L W 795 26 M 596 6 C W N 289 22 P R 1904 The order is open to revision 21 A 181 31 A 50 It is only the Judges and Officers specially mentioned in this section who can frame and publish the list of touts they cannot delegate the task of making the enquiry or taking evidence to a subordinate officer and the evidence must be adduced before the former 5 Lah 443 It has never

Officers mentioned in a subordinate officer

The provisions of this section are exceptional should be exercised before action is taken against anybody They must be given full opportunity for adducing evidence 92 Ind Cas 749—27 Cr L J 333 A I R 1926 Lah 227 In a proceeding under this section adequate opportunity should be given to show cause A I R 1930 All 796 Failure of a tout to show cause is not an offence under section 147 of the Indian Penal Code A I R 1923 Rang 296 The insert on of names of persons as touts should be made after conducting a proper enquiry under this section 40 C L J 118 26 A L J 790 A I R 1928 All 334 A resolution passed by a Bar Association declaring certain persons to be touts is merely evidence upon the value of which the judicial officer to whom it is sent must form his own opinion 26 A L J 790 A I R 1928 All 334 A resolution or report of a sub-committee of only seven members of a
resolution
neral rep
7—23 Cr
752 26
meeting

Nag 141

A revision lies to the High Court from an order of the Distr of Magistrate including the name of a person in the list of touts under this section 1930 A L J 961 A I R 1930 All 641 31 A L J 542—A I R 1930 Lah 889 but see 1931 A 315 A I R 1931 Lah 93

Section 2A—Under subs 24 the enquiry is entrusted to Subordinate Court It is the Subordinate Court which must be satisfied that the person is proved to be a tout Where the Joint Magistrate held an enquiry that the person was not tout but the District Magistrate without further enquiry and without notice to the party declared him a tout *vide* that the order was illegal 190 A L J 961 A I R 1930 All 641

Under s 36 (24) the District Magistrate can send to a Subordinate Magistrate the name of any person alleged or suspected to be a tout and can order the Subordinate Magistrate to order an enquiry in regard to such person 31 P L R 212=A I R 1930 Lah 405

Issue of notice under section 36 (2) proviso to person whose name is included in list of touts is unnecessary A I R 1931 Lah 543

Order by District Judge on appeal dismissing appellant's objections to a report of senior Sub Judge are not such formal orders which he has to pass before one is rightly included in list of touts A I R 1931 Lah 156 Resolution based on general repute though of less weight is legally admissible in evidence A I R 1931 All 711—1930 A L J 176=33 Cr L J 282 Resolution of Bar Association as evidence of

* Sub sec 6 was added by Act XV of 1906

must be by majority of legal practitioners entitled to practise in meeting specifically equasi criminal and Court necessary that every member Judicial Commissioner s A I R 1932 Nag 50

Explanation—The words "any person appearing in this explanation mean any named person or any specified person 38 Cr L J 316=A I R 1937 Sind 4=166 Ind Cas 643 Proceedings to declare a man a tout is not judicial proceedings but proceedings of a departmental nature which relate to the working of the Courts *Ibid* Before a person can be declared a tout it must be found as a fact that he acted in a manner which would bring him within the definition laid down in s 3 A I R 1938 Mad 634

CHAPTER VIII

MISCELLANEOUS

37 To facilitate the ascertainment of the qualifications mentioned in sections 6 [and 17 respectively],† the [Provincial Government]* to appoint Examiners [Provincial Government]* shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may from time to time, make regulations for conducting such examinations

38 [Except as provided by sections 4, 5, "7",† 16, "25",† 27, 32 and 36, nothing in this Act applies to advocates vakils and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court or to Advocates enrolled "under section 41 of this Act, § and]† except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1925'†

Notes—A person does not cease to be a vakil of a High Court by being admitted as a pleader in another Court 12 O L J 558-89 Ind Cas 187

[39 When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue agent under section 18 is, suspended or dismissed in one of such capacities he shall be deemed to be suspended or dismissed, as the case may be also in the other]†

40 Notwithstanding anything hereinbefore contained, no pleader [mukhtar or revenue-agent]† shall be suspended or dismissed under this Act, unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him

Notes—Under this section a pleader should not be suspended without an opportunity being afforded to defend himself 76 Ind Cas 895=25 Cr L J 265

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read Governor vide G B Order of 1937

† The words within brackets have been omitted in Burma by G B Order of 1937

‡ The figures within quotations have been added by Act I of 1903

§ The words quoted have been substituted for the words by the Chief Court of the Punjab by the Legal Practitioners Act (IX of 1891) s 7

* Words quoted were added by Act 38 of 1936

*[41 (1) A High Court not established by Royal Charter "in respect of which the Indian Bar Councils Act, 1926, is not in force"† may from time to time, with the previous sanction of the (Provincial Government)‡, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and subject to such rules, may enrol such and so many advocates as it thinks fit

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and "except in the case of the Chief Courts of Oudh and Sind"§ || unless the order of the High Court dismissing or suspending him has been confirmed by the [Provincial Government‡] ¶

Notes —Power of review cannot be exercised with regard to order under s 41 A I R 1931 Oudh 140 (S B) Order passed by Judicial Commissioner's Court confirmed by Local Government can be rescinded by Chief Court subject to confirmation by Local Government A I R 1931 Oudh 140 (S B)

42 Repeal of Act I of 1846 and XX of 1853 [Repealed by Act I of 1938 and G B order of 1937]

FIRST SCHEDULE **

original
†
‡
§
||
¶
Certain words after this have been omitted having been repealed by Act XI of 1923 and Act 18 of 1919
* The words within brackets have been omitted in Burma by G B order of 1937
** First Schedule has been repealed in British India by Act I of 1938 It is in force in Burma —

ENACTMENTS REPEALED (See section 2)

Number and Date of Enactments	Title	Extent of Repeal
Act XX of 1860	To amend the law relating to leaders and Mukhtars	The whole
Act XXIX of 1865	To amend the Pledgers Mukhtars and Revenue agents Act 1865	So much as has not been repealed
Act IX of 1866	To extend to the Sadar Court of the North Western Provinces certain provisions of The Pledgers, Mukhtars and Revenue agents Act 1865 and of Act No XXIX of 1865	The whole
Act IV of 1876	To authorise Revenue agents to practise in certain suits in the Munsifs Courts of the Lower Provinces of Bengal	The whole
Act XXII of 1877	The Punjab Courts Act 1877	Sections 42, 43, 44 and 45

SECOND SCHEDULE
VALUE OF STAMPS FOR CERTIFICATES
(See section 25)

I

For a certificate authorising the holder to practise as a Pleader—

- (a) in the High Court and any Subordinate Court—Rupees fifty
- (b) in any Court of Small Causes in a Presidency town—Rupees twenty five
- (c) in all other subordinate Courts—Rupees twenty five
- (d) in the Courts of Subordinate Judges Munsifs Assistant Commissioners Extra Assistant Commissioners and Tahsildars in Courts of Small Causes outside the Presidency towns and in all Criminal Courts subordinate to the High Court—Rupees fifteen
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five

II

For a certificate authorising the holder to practise as a Mukhtar—

- (f) in the High Court and any subordinate Court—Rupees twenty five
- (g) in any Court of small Causes in a Presidency town—Rupees fifteen
- (h) in all other subordinate Courts—Rupees fifteen
- (i) in the Courts of Subordinate Judges Munsifs Assistant Commissioners Extra Assistant Commissioners and Tahsildars in Courts of Small Causes outside the Presidency towns and in all Criminal Courts subordinate to the High Court—Rupees ten
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five

III

- For a certificate authorising the holder to practise as a—
- (k) in the office of a Collector and in any Revenue office subordinate to a Collector—Rupees five
 - (l) in the office of a Commissioner—Rupees ten
 - (m) in the office of a Collector and in any Revenue office subordinate to a Collector—Rupees five

THE LEGAL PRACTITIONERS (WOMEN) ACT, 1923

ACT NO XXIII OF 1923

(Received the assent of the Governor General on the 2nd April, 1923)

An Act for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners, It is hereby enacted as follows —

1. (1) This Act may be called the Legal Practitioners (Women) Act, 1923

Short title and extent

[(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas]†

2 In this Act, 'legal practitioner' means a legal practitioner as defined in section 3 of the Legal Practitioners Act 1879

Definition

* In Burma Parts II and III of the Second Schedule have been omitted by G B Order of 1937

† In Burma sub-section (2) has been omitted by G B Order of 1937

3 Notwithstanding anything contained in any enactment in force in British [India]* or in the Letters Patent of [any High Court]* or in any rule or order made under or in pursuance of any such enactment or Letters Patent, no woman shall by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such and any such rule or order which is repugnant to the provisions of this Act shall to the extent of such repugnancy, be void

Notes — The Letters Patent of several High Courts empower them to admit proper person as Advocates, Vakils and Attorneys and to make rules for their qualification. Ss 6 and 7 of the Indian Legal Practitioners (Fees) Act, 1926, give powers to the High Courts and for the qualification and admission of advocates respectively. Ss 6 and 31 of 1926) contain similar provisions. Decisions have been given by the Privy Council and the High Courts as to who is qualified to be enrolled and to practice as legal practitioners in India consulted Local Governments and other authorities on the question whether women should be as eligible as men to enter upon and earn as legal practitioners. The general opinion expressed was that in the absence of any Indian opinion. An opportunity was given to the Government to amend the bill further to amend the provisions of the bill. During the course of the debate upon the motion by the Assembly, the Government stated that the present bill has been framed on the basis of the reasons given by the Government.

and other authorities on the question whether women should be as eligible as men to enter upon and earn as legal practitioners. The general opinion expressed was that in the absence of any Indian opinion. An opportunity was given to the Government to amend the bill further to amend the provisions of the bill. During the course of the debate upon the motion by the Assembly, the Government stated that the present bill has been framed on the basis of the reasons given by the Government.

Act makes obsolete the Full Bench ruling reported in 21 C W N 74 = 24 C L J 38 in which it was held that a woman was not entitled to practise as a pleader as well as the case in 61 Ind Cas 686 (F B) 3 Pat L T 69 = 1922 Pat 97

THE LEGAL PRACTITIONERS (FEES) ACT 1926

ACT NO XXI OF 1926

(Received the assent of the Governor General on the 25th March 1926)

An act to define in certain cases the rights of legal practitioner to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties It is hereby enacted as follows —

Notes — The Act is a short title act and is intended to be a permanent law. It is a public law and is intended to be a permanent law. It is a public law and is intended to be a permanent law.

Short title extent and commencement

1 (1) This Act may be called The Legal Practitioners (Fees) Act 1926

[(2) It extends to the whole of British India]†

* In Burma for India substitute Burma and for any High Court the High Court of Burma. G.O. No. 1111 of 1937

† In its application to Burma, this section has been amended by G.O. No. 1111 of 1937

(3) It shall come into force on such date as the [Central Government]* may, by notification in the [Gazette of India]* appoint.

Notes—This Act was brought into force, on the 1st June 1926, *vide Gazette of India*, 1926, Part I, p. 514.

Interpretation.

2 For the purposes of this Act unless there is anything repugnant in the subject or context,—

(a) "legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879, and

(b) a legal practitioner shall not be deemed to "act" if he only pleads or to agree to "act" if he agrees only to plead.

Notes—No woman is disqualified by reason of her sex, *vide Act 23 of 1923*

Clause (a)—Legal practitioners include advocate of High Court, A. I. R. 1931 Rang 104.

Clause (b)—Clause (b) is very probably intended to exclude barristers who only

fees are payable as a matter of honour Counsel may refuse to accept a brief if the fee is not paid when the brief is delivered. *unsel, and if he does becomes a matter*

44, 551, *Harbert v.*

306) 2 Ch. 487, *Re*

press promise by the

client himself to pay fees to counsel for *advocacy*, whether made before or during or after the litigation, has no binding effect *Kennedy v Brown* (1893) 13 C. B. N. S. 677. The relation of counsel and client renders the parties mutually incapable of making any legal contract of hiring any service concerning advocacy in litigation *Ibid.* The request and promises of the client and the services of counsel create neither an obligation nor an inception of obligation, nor any inchoate right whatever capable of being completed and made into a contract by any subsequent promise 2 *Halsbury*, p. 392. The fees of a barrister are not *merces* but *honoraria*. 3 M. 133 (F. B.), 25 A 209 (F. B.).

3. Any legal practitioner who acts or agrees to act for any person

Agreement for engagement of legal practitioner may by private agreement settle with such person the terms of his engagement and the fee to be paid for his professional services

Notes—Under section 28 of the Legal Practitioners Act which has been repealed by this Act no agreement entered into by any Pleader, Mukhtar or Revenue-agent with any person retaining or employing him respecting the amount and manner of payment for the whole or any part of any past or future service, fees, charges or disbursements in

entitled to whatever was fair and just remuneration for the service he had actually rendered 17 N. L. R. S., 18 L. J. 373, 23 Ind. Cas 763, 21 C. L. J. 618; A. I. R. 1931 Pat 137; 19 Ind. Cas 209, 20 Ind. cas 47, 12 B. 557, 11 C. P. L. R. 137; 40 C. 315; 20 M. 365, 57 M. L. J. 756 111 Ind. Cas 149=A I. R. 1928 Nag. 293. Fees of junior counsel should be two thirds of senior counsel A I R 1931 Cal 523. By this section such an agreement need not be filed in Court An attorney is not entitled to any donations. A. I. R. 1930 Rang 213 Where fee is not settled with client, fees

* Substituted in British India by G. I. Order of 1937. In Burma read "Governor" and "Gazette" respectively, *vide G. I. Order of 1937.*

4 Any such legal practitioner shall be entitled to institute and maintain legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner

Notes — This Act further repeals and re enacts further provisions now contained in the Legal Practitioners Act 1879, and the Bombay Pleaders Act, 1920, in so far as those provisions are respectively inconsistent or not consistent with the recommendations' — *Statement of Objects and Reasons* Now legal practitioners are entitled to sue for the recovery of their fees and costs.

731-1936 O W \ 577=33 P L R 684=63 C L J 521=162 Ind Cas 445=17 Pat
L T 429=40 C W N 933=A I R 1936 P C 176 =71 M L J 631 (P C) Where
client agrees to pay munshiana over and above the pleader's fees, the pleader is entitled to
sue for munshiana A I R 1938 Lah 806 Where pleader is engaged but vakalatnama
does not contain his signature, he is entitled to his remuneration for work done Ibid

5 No legal practitioner who has acted or agreed to act shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties

Notes—By this section a great responsibility is cast upon the legal practitioners. He can sue for his fees for professional services rendered and can be sued for negligence. 4 L. B. R. 55 (F. B.) see also 25 W. R. 334. Under O. XXI R. 63 C. P. Code an order

loss or damage is caused to a client for want of knowledge or skill on the part of a legal practitioner he is guilty of negligence and an action for damages lies against him. *Hart v Frame ubi supra*, *Donaldson v Haldane* (1840) 7 Cl & Fin 762 HL, *Parker v Rollis*, (1854) 14 C B 691, *Litington v Holland* (1842) 9 M & W 659. Even after the legal practitioner's default, the client must show that he has suffered loss or damage. *88 L T 10* *contra* whether the legal practitioner is liable for negligence. *7 Cl & Fin 762* and client must (1861) 4 M & W 167 HL. In order to establish liability two things need be proved (1)

committed, not when the loss is sustained *Smith v. Fox* (1818), 6 Hare, 380—; and *Hulbury's Laws of England*, Vol 26 pp 753, 755

Repeal

6 Repealed by Act XII. of 1927

THE LEGAL REPRESENTATIVES' SUITS ACT 1855

ACT NO XII OF 1855 *

(Received the G G's assent on the 27th March, 1853)

An Act to enable Executors, Administrators, or Representatives to sue and be sued for certain wrongs

WHEREAS it is expedient to enable executors, administrators or representatives in certain cases to sue and be sued in respect of certain wrongs which, according to the present law, do not survive to or against such executors, administrators or representatives It is enacted as follows —

1 An action may be maintained by the executors, administrators or representatives of any person deceased for any wrong committed in the life time of such person, which has occasioned pecuniary loss to his estate, for which wrong an action might have been maintained by such person, so as such wrong shall have been committed within one year before his death, and the damages, when recovered, shall be part of the personal estate of such person

and further, an action may be maintained against the executors or administrators or heirs or representatives of any person deceased for any wrong committed by him in his lifetime for which he would have been subject to an action, so as such wrong shall have been committed within one year before such person's death, and the damages to be recovered in such action shall if recovered against an executor or administrator bound to administer according to the English law, be payable in like order of administration as the simple contract debts of such person

Notes — Act XII of 1855, which deals with maintenance of cases by executors administrators or representatives of a deceased person for recovery of certain moneys, applies to his lifetime have maintained but has not insti
The Calcutta Corporation 31 C 406 = 8 C W N
g doer abates at his death since cl 2 of s 1 has
against the wrong doer 29 M 467, see also 15
the personal representatives for a wrong done by
ath, although such wrong be of a purely personal
character as for example of defamation 2 H 325 = Marshall 314 Wrongs committed
by a deceased person survive to his heirs and this Act only relates to wrongs which do not
survive to the representative of a deceased person 1 W R 251 In India the doctrine

s regards the
of 1872, s 3,
1, in Upper

of *actio personalis moritur cum persona* does not form part of the law and claims by and against the representatives of a deceased person which are regulated by s 80 of the Probate and Administration Act of 1881 and also by the Legal Representatives Suits Act of 1853 so far as the latter enactment is not inconsistent with the former 53 C 987-100 Ind Cas 296-A I R 1927 Cal 277

2 No action commenced under the provisions of this Act shall abate by reason of death of either party, but the same may be continued by or against the executors administrators or representatives of the party deceased. Provided that in any case in which any such action shall be continued against the executors, administrators, or representatives of a deceased party, such executors administrators, or representatives may set up a want of assets as a defence to the action either wholly or in part in the same manner as if the action had been originally commenced against them

Death of either party not to abate suit

Proviso

THE LEPERS ACT (III OF 1898)

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SCHEDULE

THE LEPERS ACT 1898

ACT NO III OF 1898.

Received the assent of the Governor General on the 4th February 1898

An Act to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings

WHEREAS it is expedient to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings It is hereby enacted as follows —

1 (1) This Act may be called the Lepers Act, 1898

Title, extent and commencement

[(2) It extends to the whole of British India inclusive of* British Baluchistan the Santhal Parganas and the Pargana of Spiti but]†

* Certain words after this repealed by Act 13 of 1893 have been omitted

† In Burma sub section (2) has been omitted by G. B. Order of 1937

(3) It shall not come into force in any part thereof until the [Provincial Government]* as hereinafter provided, has declared it applicable thereto

(4) The [Provincial Government]* may, by notification in the [official Gazette]† apply this Act or any part thereof to the whole or any portion of the territories for the time being under its administration ‡

Notes—This Act has been declared to be in force in the Sonthal Parganas by Reg 3 of 1872 s 3 as amended by sec 3 of 1899 in Upper Burma (except the Shan States) by Act 13 of 1898 s 4 and in the Arakan Hill District by Reg I of 1916 s 2

Definitions

2 In this Act, unless there is anything to the contrary in the title or context—

(1) 'leper

(2) 'pauper

variety of leprosy

(a) who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms, or

(b) who is at large without any ostensible means of subsistence

(3) 'leper asylum' means a leper asylum appointed under section 3

(4) Board means a Board constituted under section 5 and

[(5) "District Magistrate includes a Chief Presidency Magistrate ‡]

Notes—The definition clause is always to be read subject to context

3 || The [Provincial Government]* may by notification in the [official Gazette]† appoint any place to be a leper asylum if it is satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein and may by a like notification specify the local areas from which lepers may be sent to such asylum

Notes—This section authorises the Local Government to appoint any place to be a leper asylum

4 Subject to any rules which may be made under section 16 the [Provincial Government]* may appoint any Medical Officer of the Government or other qualified medical man to be an Inspector of Lepers and any person to be a Superintendent of a Leper Asylum with such establishment as may in its opinion be necessary and every Inspector or Superintendent so appointed shall be deemed to be a public servant

5 The [Provincial Government]* shall constitute for every leper asylum appointed under section 3 a Board consisting of not less than three members one of whom at least shall be a Medical Officer of the Government

Notes—The appointment of a medical officer in the Board is compulsory

6 (1) Within any local area which has been specified under section 3 any police officer or any other person specially empowered by the by [Provincial Government]* order in writing in this behalf † may arrest without a warrant any person who appears to him to be a pauper leper

(2) Such police-officer or other person † shall forthwith take or send the person so arrested to the nearest convenient police station

Notes.—For the safety of the public health the power to arrest pauper lepers is given

7 Every person brought to a police station under the last foregoing section shall without unnecessary delay, be taken before an Inspector of Lepers who—

(a) if he finds that such person is not a leper within the meaning of section 2 shall give him a certificate in Form A set forth in the schedule, whereupon such person shall be forthwith released from arrest,

(b) if he finds that such person is a leper within the meaning of section 2 shall give to the police officer, in whose custody the leper is a certificate in Form B set forth in the schedule whereupon the leper shall, without unnecessary delay be taken before a Magistrate having jurisdiction under this Act

8 (1) If it appears to any [Presidency Magistrate or] ‡ Magistrate of the first class or to any other Magistrate authorised in this behalf by the [Provincial Government]* upon the certificate in Form B set forth in the schedule that any person is a leper and if it further appears to the Magistrate that the person is a pauper leper he may after recording the evidence on the above mentioned points, and his order thereon send the pauper leper in charge of a police officer together with an order in Form C set forth in the schedule, to a leper asylum where such leper shall be detained until discharged by order of the Board or the District Magistrate

Provided that if the person denies the allegation of leprosy the Magistrate shall call and examine the Inspector of Lepers, and shall take such further evidence as may be necessary to support or to rebut the allegation that the person is a leper and may for this purpose adjourn the enquiry from time to time, remanding the person for observation or for other reason to such place as may be convenient or admitting him to bail

Provided also that if any friend or relative of any person found to be a pauper leper shall undertake in writing to the satisfaction of the Magistrate that such pauper leper shall be properly taken care of and shall be prevented from publicly begging in any area specified under section 3 the Magistrate instead of sending the leper to an asylum, may make the leper over to the care of such friend or relative, requiring him if he thinks fit to enter into a bond with one or more

sureties, to which the provisions of section 514 of the Code of Criminal Procedure shall be applicable.

(2) If the Magistrate finds that such person is not a leper, or that, if a leper, he is not a pauper leper, he shall forthwith discharge him.

Notes.—Under this section power is given only to an experienced Officer.

9. (1) The [Provincial Government]* may, by notification in the [official Gazette]† order that no leper shall, within any area specified under section 3,—

(a) personally prepare for sale or sell any article of food or drink or any drugs or clothing intended for human use ; or

(b) bathe, wash clothes or take water from any public well or tank debarred by any municipal or local bye-law from use by lepers ; or

(c) drive, conduct or ride in any public carriage plying for hire other than a railway carriage , or

(d) exercise any trade or calling which may by such notification be prohibited to lepers.

(2) Any such notification may comprise all or any of the above prohibitions.

(3) Whoever disobeys any order made pursuant to the powers conferred by this section shall be punishable with fine which may extend to twenty rupees ;

Provided that, when any person is accused of an offence under this section, the Magistrate before whom he is accused shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate, in Form B set forth in the schedule, in respect of such person.

Notes.—This provision is made to prevent infection.

10. (1) Whenever any leper who has been convicted of an offence punishable under the last foregoing section is again convicted of any offence punishable under that section, the Magistrate may, in addition to, or in lieu of, any punishment to which such leper may be liable, require him to enter into a bond, with one to depart forthwith from the local area which he is, and not to enter that or any until an Inspector of Lepers shall have given him a certificate in Form A set forth in the schedule.

(2) If any such leper fails to furnish any security required under sub-section (1), the Magistrate may send him in charge of a police-officer, with an order in Form D set forth in the schedule, to a leper asylum, where such leper shall be detained until discharged by order of the Board or the District Magistrate.

(3) The powers conferred by this section shall only be exercised by a [Presidency Magistrate or]‡ Magistrate of the first class.

* In British India the words within brackets have been inserted by G. I. Order of 1937. In Burma for these words read the word "Governor", vide G. B. Order of 1937.

† In Burma for these words read the word "Gazette", vide G. B. Order of 1937.

‡ In Burma omit the words within brackets, vide G. B. Order of 1937.

11. Any person who, within any area specified under section 3, knowingly employs a leper in any trade or calling prohibited by order under section 9 shall be punishable with fine which may extend to fifty rupees

Penalty on person employing lepers in prohibited trade
 Provided that the alleged leper shall be produced before the Magistrate, and the Magistrate shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate in Form B set forth in the schedule in respect of such alleged leper

Notes—The employers of lepers are also punished. This provision is also made for public safety

12 Whoever, having been sent to a leper asylum under an order of a Magistrate in Form C or Form D set forth in the schedule, escapes from, or leaves, the asylum without the permission in writing of the Superintendent thereof, may be arrested "without a warrant by any police-officer or by any other person especially empowered by the [Provincial Government]* by order in writing in this behalf, † and upon arrest shall be forthwith taken back to the leper asylum

13 Two or more members of the Board, one of whom shall be the Medical Officer, shall, once at least in every three months, together inspect the leper asylum for which they are constituted, and see and examine (a) every leper therein admitted since the last inspection together with the order for his admission, and (b), as far as circumstances will permit, every other leper therein, and shall enter in a book to be kept for the purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lepers therein

Notes—This provision is made to see justice done to lepers

14 Any two members of the Board, one of whom shall be the Medical Officer, may at any time, by an order in writing in Form E set forth in the schedule and signed by them, direct the discharge from the leper asylum of any leper detained therein under the provisions of this Act

15 Any person, other than a pauper leper, in respect of whom an Inspector of Lepers has issued a certificate, in Form B set forth in the schedule, declaring him to be a leper, or has refused to issue a certificate in Form A set forth in the schedule, may appeal against the issue or refusal of any such certificate to such officer as may be appointed by the [Provincial Government]* in this behalf, and the decision of such officer shall be final

16 The [Provincial Government]* may, by notification in the [official Gazette], ‡ make rules generally for carrying out the purposes of this Act, and in particular—

Power of the Provincial Government to make rules

* In British India the words within brackets have been substituted by G I Order of 1937

† The words within quotations have been substituted by Act 22 of 1920

‡ In Burma for the words within brackets read the word 'Gazette', vide G B order of 1937.

(a) for the guidance of all or any of the officers discharging any duty under this Act, and

(b) for the management of, and the maintenance of discipline in, a leper asylum

Notes —The rules made by the Local Government have the force of law.

Power to local authorities to expend funds and appropriate property to asylums

17 Notwithstanding anything in any enactment with respect to the purposes to which the funds or other property of a local authority may be applied, any local authority may—

(a) establish or maintain, or establish and maintain, or contribute towards the cost of the establishment or maintenance or the establishment and maintenance of, a leper asylum either within or without the local limits of such local authority,

(b) with the previous sanction of the [Provincial Government]* and subject to such conditions as [that Government]† may prescribe, appropriate any immovable property vested in, or under the control of, such body, as a site for, or for use as, a leper asylum

Notes —Ordinarily a Local Authority cannot spend money for purposes which are not mentioned in the Act creating it. This section authorises the spending of money by the Local Authority for Leper Asylums

18 No suit, prosecution or other legal proceeding shall lie against any officer or person in respect of anything in good faith done or intended to be done under, or in pursuance of, the provisions of this Act

Notes —All public officers are generally protected for acts done in good faith under any Act

[19 The [Provincial Government]‡ may, by notification in the Gazette of India, direct that any leper or class of lepers, with respect to whom an order for segregation and medical treatment has been made by a magistrate having jurisdiction within [any Indian State]§ may be sent to any leper asylum [in the Province]¶ specified in such order, and thereupon the provisions of this Act and of any rules made thereunder shall, with such modifications not affecting the substance as may be reasonable and necessary to adapt them to the subject matter, apply to any leper sent to a leper asylum in pursuance of such notification as though he had been sent by the order of a Magistrate having jurisdiction under this Act]||

SCHEDULE

1.—CERTIFICATE

(Section 7)

I, THE undersigned (here enter name and official designation) hereby certify that I on the day of at personally examined (here enter name of person

I Order of 1937.
ler of 1937.

batituted by 937.

examined), and that the said
Given under my hand this

is not a leper as defined by the Lepers Act, 1898
day of 189

(Signature)
Inspector of Lepers

B — CERTIFICATE
(Section 7.)

I, THE undersigned (*here enter name and official designation*), hereby certify that I on the day of at personally examined (*here enter name of leper*), and that the said is a leper as defined by the Lepers Act, 1898, and that I have formed this opinion on the following grounds, namely,—
(*Here state the grounds*)

Given under my hand this day of 189

(Signature)
Inspector of Lepers

C — WARRANT OF DETENTION
(Section 8)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT .

WHEREAS it has been made to appear to me that (*name and description*) is a pauper leper as defined in the Lepers Act, 1898

This is to authorise you, the said Superintendent, to receive the said into your custody together with this order and him safely to keep in the said asylum until he shall be
her she

discharged by order of the Board or the District Magistrate

Given under my hand and the seal of the Court this day of

189 .

(Signature)
Magistrate

Seal.

D — WARRANT OF DETENTION
(Section 10)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT .

WHEREAS (*name and description*) has this day been convicted by me of an offence punishable under section 9 of the Lepers Act 1898 and whereas it has been proved before me that the said (*name and description*) was previously convicted of an offence punishable under the same section

This is to authorise you the said Superintendent to receive the said into your custody together with this order and him safely to keep in the said asylum until he shall be discharged by order of the
her she Board or the District Magistrate

Given under my hand and the Seal of the Court this day of 189

(Signature)
Magistrate

Seal

E — ORDER OF DISCHARGE BY BOARD *
(Section 11)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT .

WHEREAS (*name and description*) was committed to your custody under an order dated the day of 189 and there have appeared to

us sufficient grounds for the opinion that he can be released without hazard or in
she convenience to the community

This is to authorise and require you forthwith to discharge the said (*name*) from your custody

Given under our hands this day of 189 .

(Signature)
Members of the Asylum Board

* A corresponding form may be used by the District Magistrate for orders of discharge issued under section 10 (2)

LETTERS PATENT (ALLAHABAD)

Extracts from Letters Patent establishing a High Court in the North Western Provinces of the Bengal Presidency, dated 17th March, 1866

Criminal Jurisdiction

15 And we do further ordain that the said High Court of Judicature for the North-Western Provinces, shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents, and the criminal jurisdiction of the said last mentioned High Court over such persons shall cease at such date. Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last mentioned High Court shall continue as if these presents had not been issued.

16 And We do further ordain that the said High Court of Judicature for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17 And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

18 And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19 And We do further ordain that, on such point or points of law being so reserved as aforesaid, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

20 And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall be a Court of Appeal from the Criminal Courts of the said Provinces and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force

21 And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorised to refer cases to the Court of Sudder Nizamut Adawlut of the North-Western Provinces, and to revise all such cases tried by any Officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut

22 And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Act under which punishments to be inflicted

23 And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North Western Provinces either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision charged with any offence for which provision is made by Act No XLV of 1860, call the 'Indian Penal Code' or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents shall be liable to punishment under the said Act or Acts, and not otherwise

24 And We do further ordain that whenever it shall appear to the Lieutenant-Governor of the North Western Provinces subject to the control of the Governor General in Council convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of any Sudder Dewany Adawlut or the Sudder Nizamut Adawlut of the North Western Provinces, other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings cases before the said High Court, at such place or places, sha

regulated by any law relating thereto which has been or may be made by competent legislative authority for India

Criminal Procedure

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal, immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No XXV of 1861 or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Appeals to Privy Council.

32. And We do further ordain that, from any judgment, order or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council. Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require subject always to such rules and orders as We may, with the advice of Our Privy Council, hereinafter make in that behalf

LETTERS PATENT (CALCUTTA) *

(Extracts from Letters Patent for the High Court of Judicature at Fort William in Bengal, dated 28th December, 1865)

Criminal Jurisdiction

33 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William, and beyond such limits, and not within the limits of the criminal jurisdiction of any other High Court or Court established by competent Legislative authority for India, as the said High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents

* Letters Patent of Bombay and Madras are similarly worded.

23 And We do further ordain that the said High Court of
 Jurisdiction as to persons Judicature at Fort William in Bengal, in
 the exercise of its ordinary original criminal
 jurisdiction, shall be empowered to try all persons brought before it
 in due course of law

24 And We do further ordain that the said High Court of
 Extraordinary original criminal jurisdiction Judicature at Fort William in Bengal shall
 have extraordinary original criminal
 jurisdiction over all persons residing in
 places within the jurisdiction of any Court now subject to the
 superintendence of the said High Court, and shall have authority
 to try at its discretion any such persons brought before it on charges
 preferred by the Advocate General, or by any Magistrate or other
 officer specially empowered by the Government in that behalf

25. And We do further ordain that there shall be no appeal
 No appeal from High Court exercising original jurisdiction Court may reserve points of law to the said High Court of Judicature at
 Fort William in Bengal from any sentence
 or order passed or made in any criminal
 trial before the Courts of original criminal
 jurisdiction which may be constituted by
 one or more Judges of the said High Court But it shall be at the
 discretion of any such Court to reserve any point or points of law
 for the opinion of the said High Court

26 And We do further ordain that on such point or points of
 law being so reserved as aforesaid, or on
 its being certified by the said Advocate
 General that in his judgment there is an
 error in the decision of a point or points
 of law decided by the Court of original criminal jurisdiction or
 that a point or points of law which has or have been decided by the
 said Court should be further considered the said High Court shall
 have full power and authority to review the case or such part of it
 as may be necessary, and finally determine such point or points of
 law, and thereupon to alter the sentence passed by the Court of
 original jurisdiction and to pass such judgment and sentence as to
 the said High Court shall seem right

27 And We do further ordain that the said High Court of
 Appeals from Criminal Courts in the Provinces Judicature at Fort William in Bengal shall
 be a Court of Appeal from the Criminal
 Courts of the Bengal Division of the
 Presidency of Fort William and from all other Courts subject to its
 superintendence and shall exercise appellate jurisdiction in such cases
 as are subject to appeal to the said High Court by virtue of any law
 now in force

28 And We do further ordain that the said High Court of
 Hearing of referred cases and revision of criminal trials Judicature at Fort William in Bengal, shall
 be a Court of reference and revision from
 the Criminal Courts subject to its appellate
 jurisdiction and shall have power to hear and determine all such cases
 referred to it by the Sessions Judges or by any other Officers now
 authorised to refer cases to the said High Court and to revise

such cases tried by any Officer or Court possessing Criminal jurisdiction, as are now subject to reference to, or revision by, the said High Court

29 And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any Officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other Officer or Court

High Court may direct the transfer of a case from one Court to another
Notes—Under clause 29 High Court can transfer criminal case from one Court to another competent Court in mofussil itself 35 C W N 1092=136 Ind Cas 598=83 Cr L J 322-A I R 1932 Cal 229 Application upon complaint asking High Court to take proceedings against one not in India and others residing within original jurisdiction of High Court does not lie under clause 29 A I R 1933 Cal 123=35 C W N 1098=135 Ind Cas 880

Criminal law

30 And We do further ordain that all persons brought for trial before the said High Court of Judicature at Fort William in Bengal either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a Court of Appeal reference or revision, charged with any offence for which provision is made by Act No XLV of 1860, called the "Indian Penal Code," or by any Act, amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act, or Acts and not otherwise

33 And We do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have and exercise criminal jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of Vice-Admiralty or otherwise in connection with maritime matters or matters of prize

Criminal Procedure

38 And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Appeals to Privy Council

41 And We do further ordain that, from any judgment, order or sentence of the said High Court of Appeal in criminal cases, etc. Judicature at Fort William in Bengal, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the persons aggrieved by such judgment, order or sentence to appeal to Us Our heirs or successors in Council provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf

Notes—Leave to appeal to Privy Council from death sentence can be entertained by chartered High Courts only 145 Ind Cas 216=29 N L R 840=A I R 1933 Nag 216

LETTERS PATENT (LAHORE)

(Extracts from Letters Patent constituting the High Court of Judicature at Lahore, for the Provinces of the Punjab and Delhi, dated 21st March, 1919)

Criminal Jurisdiction

15 And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of the Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents

16 And We do further ordain that the High Court of Judicature at Lahore, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

17 And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

No appeal from High Court exercising original jurisdiction Court may reserve points of law

19 And We do further ordain that, no such point or points of law being so reserved as aforesaid, the High Court to review cases on points of law reserved by one or more Judges of the High Court shall have full power and authority to review the case, or such part of it as may be necessary and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right

20 And We do further ordain that the High Courts of Judicature at Lahore shall be a Court of Appeal from the Criminal Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India

21 And We do further ordain that the High Court of Judicature at Lahore shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers in the Provinces of the Punjab and Delhi who were immediately before the publication of these presents, authorised to refer cases to the Chief Court of the Punjab and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Provinces of the Punjab and Delhi, as were, immediately before the publication of these presents, subject to reference to or revision by the Chief Court of the Punjab

22 And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

23 And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore, either in the exercise of its original jurisdiction or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No XLV of 1860, called the 'Indian Penal Code,' or by any Act amending or excluding the said Act which may have been passed prior to the publication of

these presents shall be liable to punishment under the said Act, or Acts, and not otherwise

Criminal Procedure

28 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure, being an Act No V of 1898, passed by the Governor General in Council or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India

Appeals to Privy Council

31 And We do further ordain that from any judgment order or sentence of the High Court of Judicature at Lahore, made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment order or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders, as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi

LETTERS PATENT (NAGPUR)

(Extracts from Letters Patent constituting the High Court of Judicature at Nagpur Dated 2nd January 1936)

Criminal jurisdiction of the High Court

15 And We do further ordain that the High Court of Judicature at Nagpur shall have ordinary original criminal jurisdiction in respect of all such persons within the Central Provinces as the Court of the Judicial Commissioner of the Central Provinces had such criminal jurisdiction over immediately before the publication of these presents

16 And We do further ordain that the High Court of Judicature at Nagpur, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons

17 And We do further ordain that in places within the jurisdiction of any Court subject to its superintendence and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Nagpur from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

19 And We do further ordain that on such point or points of law being so reserved as aforesaid the High Court of Judicature at Nagpur shall have full power and authority to review the case or such part of it as may be necessary and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right

20 And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the Criminal Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were immediately before the date of the publication of these presents, subject to appeal to the Court of the Judicial Commissioner of the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India

21 And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Central Provinces who were, immediately before the publication of these presents, authorised to refer cases to the Court of the Judicial Commissioner of the Central Provinces and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Central Provinces as were immediately before the publication of these presents, subject to reference to or revision by the Court of the Judicial Commissioner of the Central Provinces

22 And We do further ordain that the High Court of Judicature at Nagpur shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Nagpur, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No XLV of 1860, called the Indian Penal Code, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise

Criminal Procedure

28 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Nagpur shall be regulated by the Code of Criminal Procedure, being an Act No V of 1898, passed by the Governor General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India

Appeals to Privy Council

31 And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Nagpur, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction it shall be lawful for the persons aggrieved by such judgment order or sentence to appeal to Us, Our heirs or successors in Council provided that the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces

LETTERS PATENT (PATNA)

Extracts from Letters Patent constituting the High Court of Judicature at Patna, dated the 9th February, 1916

Criminal Jurisdiction

15 And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents

16. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall f

empowered to try all persons brought before it in due course of law

17 And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf

18 And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

19 And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right

20 And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India

21 And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa, who were, immediately before the publication of these presents authorised to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were immediately before the publication of these presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal

22 And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also

High Court may direct the transfer of a case from one Court to another

to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

23 And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna either in the exercise of its original jurisdiction, or in the exercise of

Offenders to be punished under Indian Penal Code

its jurisdiction as a Court of appeal, reference or revision charged with any offence for which provision is made by Act No XLV of 1860 called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise

25 And We do further ordain that the High Court of Judicature at Patna shall have and exercise in the

Criminal

Province of Bihar and Orissa all such criminal jurisdiction as was exercisable therein immediately before the publication of these presents by the High Court of Judicature at Fort William in Bengal as a Court of Admiralty or otherwise in connection with maritime matters or matters of prize

Criminal Procedure

30 And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Patna in the exercise of its

Regulation of proceedings

ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents subject to any law which has been or may be made in relation thereto by competent legislative authority for India, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act No V of 1898 passed by the Governor General in Council or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid

Appeal to Privy Council

33 And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Patna, made in the exercise of original

Appeal in Criminal cases

criminal jurisdiction or in any criminal case where any point or of law have been reserved for the opinion of the said High Court, manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction it shall be lawful

person aggrieved by such judgment order or sentence to appeal to Us Our heirs or successors in Council, provided the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa

LETTERS PATENT (RANGOON.)

(Extracts from Letters Patent constituting the High Court of Rangoon dated the [11th November 1922])

Criminal Jurisdiction

21 And We do further ordain that the High Court of Judicature at Rangoon shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction and also in respect of all persons beyond such limits over whom the Chief Court of Lower Burma had such criminal jurisdiction immediately before the publication of these presents

22 And We do further ordain that the High Court of Judicature at Rangoon, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law

23 And We do further ordain that the High Court of Judicature at Rangoon shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Government Advocate or by any magistrate or other officer specially empowered by the Government in that behalf

24 And We do further ordain that there shall be no appeal to the High Court of Judicature at Rangoon, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court

25 And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the Government Advocate that in his judgment there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction or that a point or points of law which has or have been decided by the said

Court should be further considered, the High Court of Judicature at Rangoon shall have full power and authority to review the case, or such part of it, as may be necessary and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right

26 And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Criminal Courts for which immediately before the publication of these presents the Chief Court of Lower Burma or the Judicial Commissioner of Upper Burma was a Court of Appeal and from all other Criminal Courts, whether within or without the Province of Burma, for which the said High Court is declared to be a Court of Appeal by any law made by the local legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of Lower Burma or to the Judicial Commissioner of Upper Burma by virtue of any law then in force or as may after that date be declared subject to appeal to the said High Court by any law made by the Local Legislature or by competent legislative authority for India

27 And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers, who were, immediately before the publication of these presents authorised to refer cases to the Chief Court of Lower Burma or to the Judicial Commissioner of Upper Burma, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as were, immediately before the publication of these presents, subject to reference to or revision by the Chief Court of Lower Burma or the Judicial Commissioner of Upper Burma

28 And We do further ordain that the High Court of Judicature at Rangoon shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or to try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court

Criminal Law

29 And We do further ordain that all persons brought for trial before the High Court of Judicature at Rangoon either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision shall, with any offence for which provision is made by the Indian

Offenders to be punished under Indian Penal Code

Code, being an Act passed by the Governor-General in Council and being Act, No. XLV of 1860, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents shall be liable to punishment under the said Act, or Acts, and not otherwise.

Criminal Procedure.

36. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Rangoon shall be regulated by the Code of Criminal Procedure being an Act No V of 1898, passed by the Governor-General of India in Legislative Council, or by such further or other laws in relation to Criminal Procedure as have been or may be made by the local Legislature or by competent legislative authority for India.

Appeals to Privy Council

39. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Rangoon made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner provided by the 24th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs and successors in Our or Their Privy Council provided the said High Court shall declare that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council, from the Courts of the Province of Burma.

THE INDIAN LIGHTHOUSE ACT (XVII OF 1927).

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THE INDIAN LIGHTHOUSE ACT.

ACT NO XVII OF 1927.

[PASSED BY THE INDIAN LEGISLATURE]

Received the assent of the Governor General on the 21st September, 1927

An Act to consolidate and amend the law relating to the provision maintenance and control of lighthouses by the Government in British India

WHEREAS it is expedient to consolidate and amend the law relating to the provision maintenance and control of lighthouses by the Government in British India It is hereby enacted as follows —

Notes — Under the Devolution Rules lighthouses (including their approaches)

discharge of his responsibilities in order that this subject may in future be directly administered by the Central Government

Under the present system of administration there are considerable differences from province to province not only in the method of administration but also in finance Light dues are levied in some provinces but not in others and where levied they vary

whole cost of the Perim lights and part of the cost of the Aden lights are borne by central revenues and the Orissa lights are charged partly on central and partly on Provincial revenues —Statement of Objects and Reasons

PREAMBLE

Short title extent and commencement

1 (1) This Act may be called the Indian Lighthouse Act, 1927

(2) It extends to the whole of British India

(3) It shall come into force on such date as the [Central Government]* may, by notification in the [official Gazette]* appoint

Notes

so as to whether are for India —Statement of Objects and Reasons

* Substituted by C I Order of 1937

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Customs collector" means an officer of customs exercising the powers of a Customs-collector under the Sea Customs Act, 1878,* and includes any person appointed by the [Central Government]† to discharge the functions of a Customs-collector under this Act.

(b) "district" means an area defined as a district for the purposes of this Act under section 3.

(c) "general lighthouse" means any lighthouse which the [Central Government]‡ may, by notification in the Gazette of India, declare to be a general lighthouse for the purposes of this Act.

(d) "lighthouse" includes any light-vessel, fog-signal, buoy, beacon, or any mark, sign or apparatus exhibited or used for the guidance of ships.

(e) "local lighthouse" means any lighthouse which is not a general lighthouse.

(f) "local lighthouse authority" means a [Provincial Government]‡ local authority or other person having the superintendence and management of a local lighthouse.

(g) "owner" includes any part-owner, charterer, or mortgagee in possession and any agent to whom a ship is consigned.

(h) "port" means any port, as defined in the Indian Ports Act, 1908‡ to which that Act extends, and

(i) words and expressions used in this Act and not otherwise defined have the same meanings respectively as in the Indian Merchant Shipping Act, 1923 §

Clause (a) — 'We have amended the definition in sub clause (a) in order to bring it into line with the wording of the Sea Customs Act, 1878'—*Report of the Select Committee*

Clause (b) — 'The general principles of the Bill are based on part XI of the Merchant Shipping Act, 1894, and the Merchant Shipping (Mercantile Marine Fund) Act, 1894, and parts of the existing Coast Lights Acts are also incorporated. "Lighthouse" is "fog signal buoy beacon, or any mark, sign or apparatus used for the guidance of ships." This definition covers wireless ion giving apparatus used for the guidance

Clauses (c) (e) and (f) — All lighthouses will be classified as either—(a) coast or general lighthouses, or (b) port or local lighthouses. The superintendence and management of all general lighthouses will be vested in the Governor General in Council. Local lighthouses will be administered by a local lighthouses authority which will usually be a port authority. Certain powers of inspection and control over local lighthouses are reserved to the Governor General in Council as being the general lighthouse authority. Provision is also made for the management of general lighthouses by a local authority, or of local lighthouses by the Governor General in Council, by arrangement and on payment. This would be a matter of convenience and economy.—*Statement of Object and Reasons*

Appointment of officers

3 The [Central Government]‡ may, by notification in the [Central Government]‡,—

(a) define areas to be districts for the purposes of this Act.

(b) appoint a person to be the Superintendent of Lighthouses in each district.

* VIII of 1878

† Substituted by G. I. Order of 1937

‡ XV of 1908

§ XVI of 1923

(c) appoint a person to be the Chief Inspector of Lighthouses in British India and

(d) appoint persons to be Inspectors of Lighthouses

Notes — For the purposes of lighthouse administration it is proposed that the costs

efficient if the technical staff of inspectors are of Lighthouses at his own head-quarters so that suitable man for a particular piece of work.

For this purpose it is suggested that the District and their powers should not be confined to a particular district. We have amended clause

Advisory Committees 4 (1) The [Central Government]* shall appoint a Central Advisory Committee and shall consult it in regard to—

(a) the erection or position of lighthouses or of any works appertaining thereto,

(b) additions to or the alterations or removal of, lighthouses

(c) the variation of the character of any lighthouse or of the mode of use thereof

(d) the cost of any proposals relating to lighthouses or

(e) the making or alteration of any rules or rates of dues under this Act

(2) The [Central Government]* may, if it thinks fit, appoint an Advisory Committee for any district for the purpose of advising in regard to any of the matters specified in sub section (1) in so far as the interests of the district are affected thereby

(3) Advisory Committees shall consist of persons representing interests affected by this Act or having special knowledge of the subject-matter thereof

Notes — Sub clause (1) as drafted would make it optional on the Governor General to understand that it is the Committee on matters effect to the real inten

equal number of members appointed after consultation with the commercial bodies concerned — *Report of the Select Committee*

GENERAL LIGHTHOUSES*

Management of general lighthouses by the Governor General in Council and delegation of management

5 (1) The superintendence and management of all general lighthouses are vested in the [Central Government]*

* Substituted by G. I. Order of 1937

(2) The [Central Government]* may require any local lighthouse authority to undertake the superintendence and management of any general lighthouse situated in or adjacent to the local limits within which the authority exercises its powers, and shall pay to the authority such sums to defray the cost of superintendence and management as he may determine

Notes — "The superintendence and management of all general lighthouses will be vested in the Governor General in Council.
Certain powers of inspection
— "the management
Governor General
convenience and

LOCAL LIGHTHOUSES

6 (1) The Chief Inspector of Lighthouses may, at any time, and any Superintendent or Inspector of Lighthouses may, if authorised in this behalf by a general or special order in writing of the [Central Government]* enter upon and inspect any local lighthouse and make such inquiries in respect thereof or of the management thereof as he thinks fit

(2) Every person having the charge of, or concerned in the management of, any lighthouse shall be bound to furnish to any officer authorised by or under sub-section (1) to inspect the lighthouse all such information regarding the same as the officer may require.

(3) Every local lighthouse authority shall furnish to the [Central Government]* all such returns and other information in respect of the lighthouses under its supervision and management, or of any of them, as he may require

Notes — *ix*

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7 (1) If, after an inspection under section 6 or such other inquiry as it thinks fit, the [Central Government]* is satisfied that a direction under this sub-section is necessary or expedient for the safety or otherwise in the interests, of shipping, he may direct any local lighthouse authority—

(a) to remove or discontinue or to refrain from moving or discontinuing any lighthouse under its superintendence and management or to make or refrain from making any variation in the character or mode of use of any such lighthouse, or

(b) to erect, place or maintain or to refrain from erecting, placing or maintaining any lighthouse within the local limits within which the local lighthouse authority exercises its powers

(2) A local lighthouse authority shall not erect, place, remove or

* Substituted by G. I. Order of 1937

discontinue any lighthouse or vary the character or mode of use of any lighthouse, unless it has given to the [Central Government]* at least one month's notice in writing of its intention so to do.

Provided that, in cases of emergency, a local lighthouse authority may take such action as it deems necessary and shall give immediate notice of the same to the [Central Government],* and, so far as is possible, to all shipping approaching or in the vicinity of the lighthouse.

(3) If a local lighthouse authority—

(a) fails to comply with any direction made under sub-section (1), or

(b) fails to exercise or perform, or exercises or performs in an improper, inefficient or unsuitable manner, any power or duty relating to the superintendence or management of lighthouses conferred or imposed upon it by or under any law for the time being in force, or

(c) fails to make adequate financial provision for the performance of any such duty, the [Central Government]* may, by order in writing, require the local lighthouse authority to comply with the direction, or to make arrangements to his satisfaction for the proper exercise of the power or performance of the duty, or to make financial provision to his satisfaction for the performance of the duty, as the case may be, within such period as he may specify.

(4) If the local lighthouse authority fails to comply with an order made under sub-section (3) within the specified period or within such further time as the [Central Government]* may allow, the [Central Government]* may exercise the power or perform the duty or make the requisite financial provision, as the case may be, and the local lighthouse authority shall be liable to repay to the [Central Government]* any expenditure incurred by him in so doing.

Notes—"Certain powers of inspection are conferred on the Governor General in Council, as being also made for the management of general lighthouses by the Governor General in Council would be a matter of convenience and economy."

of the powers conferred by the Lighthouse Act, or referred to in the Lighthouse Act, for the control of the general lighthouse authorities in the country of great distances requires that one month's previous notice should be given.

only in the Chief Inspector of Lighthouses or in any inspect without the order in

clause 7 shall only be made after inspection or such other inquiry as he thinks fit, when he is satisfied that it is necessary for the safety, or otherwise in the interest, of shipping."—*Statement of Objects and Reasons*

8. The [Central Government]* may, at the request of a local

Management of local lighthouses by the [Central Government]. lighthouse authority, undertake the superintendence and management of any local lighthouse on its behalf, and the local lighthouse authority shall pay to the

* Substituted by G. I. Order of 1937.

[Central Government]* such sums to defray the cost of superintendence and management as may be agreed

Notes — 'Provision is also made for the management of general lighthouses by a local authority, or of local lighthouses by the Governor General in Council, by arrangement and on payment. This would be a matter of convenience and economy'—*Statement of Objects and Reasons*

LIGHT DUES

9 For the purpose of providing or maintaining or of providing and maintaining lighthouses for the benefit of ships voyaging to or from British India or between ports in British India, the [Central Government]* shall, subject to the provisions of this Act, cause light-dues to be levied and collected in respect of every ship arriving at or departing from any port in British India.

Notes — 'The cost of local lighthouses will ordinarily be met, as at present, from port dues levied under the Indian Ports Act, 1909. But clause 9 of the Bill permits receipts from lighthouses for the provision or maintenance of lighthouses for the provision or maintenance of lighthouses'—*Statement of Objects and Reasons*

10 (1) The [Central Government]* may, by notification in the *Rates of light dues leviable* [official Gazette]* prescribe rates, not exceeding two annas per ton, at which light-dues shall be payable, and may prescribe different rates for different classes of ships, or for ships of the same class when in use for different purposes or in different circumstances

(2) Light-dues payable in respect of a ship shall be paid by the owner or master of the ship on its arrival at, and on its departure from, any port in British India

Provided that, if light-dues have been paid in accordance with the provisions of this Act in respect of any ship, no further dues shall become payable in respect of that ship for a period of thirty days from the date on which the dues so paid became payable.

(3) An order under sub-section (1) imposing, abolishing or varying light dues shall not take effect till the expiration of thirty days from the day on which the order was notified in the [official Gazette] *

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of ships.—*Statement of Objects and Reasons*

Notes—"In sub-clause (2) we have made a small amendment in order to give greater precision to the date from which the period of thirty days shall run in the case of dues paid on departure. We have also added a third sub-clause which will provide that foreign shipping will have notice of any alteration in the scale of light dues.—*Report of the Select Committee*

11 Light-dues shall be paid to the Customs-collector who shall grant to the person paying the same a receipt in writing specifying—

(a) the port at which the dues have been paid,

(b) the amount of the payment,

(c) the date on which the dues became payable, and

(d) the name, tonnage and other proper description of the ship in respect of which the payment is made

12 (1) For the purpose of the levy of light-dues, a ship's tonnage shall be reckoned as under the Merchant Shipping Acts for dues payable on a ship's tonnage, with the addition required under section 85 of the Merchant Shipping Act 1894* with respect to deck cargo

(2) In order to ascertain the tonnage of any ship for the purpose of levying light-dues, the Customs-collector may—

(a) if the ship is registered under any law for the time being in force in British India or under the law of any foreign country in respect of which an order in Council has been made under section 84 of the Merchant Shipping Act, 1894,* that ships of that country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers (any such ship being hereafter in this section referred to as a registered ship), require the owner or master or other person having possession of the ship's register or other papers denoting her tonnage to produce the same for inspection and, if such owner, master or other person refuses or neglects to produce the register or papers, as the case may be, or otherwise to satisfy the Customs-collector as to the tonnage of the ship, cause the ship to be measured and the tonnage to be ascertained, or

(b) if the ship is not a registered ship and the owner or master fails to satisfy the Customs-collector as to the true tonnage thereof according to the mode of measurement prescribed by the law for the time being in force for regulating the measurement of registered ships, cause the ship to be measured and the tonnage thereof to be ascertained according to such mode

(3) If any person refuses or neglects to produce any register or other papers or otherwise to satisfy the Customs-collector as to the true tonnage of any ship when required to do so under this section, such person shall be liable to pay the expenses of the measurement of the ship and of the ascertainment of the tonnage, and if the ship is a registered ship shall further on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in the port

where the ship lies or in any port to which she may proceed be punishable with fine which may extend to one thousand rupees

Notes—The insertion proposed in sub clause (3) is to secure that these mercantile cases shall be tried by experienced Magistrates—*Statement of Objects and Reasons*

13 (1) If the owner or master of any ship refuses or neglects to pay to the Customs-collector on demand the amount of any light-dues or expenses payable under this Act in respect of the ship the Customs collector may seize the ship and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of the dues or expenses, together with the costs of the seizure and detention, is paid

(2) If any part of such dues, expenses or costs remains unpaid after the expiry of five days following the date of the seizure, the Customs-collector may cause the ship or other thing seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses or costs remaining unpaid, together with the costs of the sale, and shall repay the surplus, if any, to the person by whom the same were payable

Notes—This section authorises the Customs collector to seize and detain ships etc. for payment of light dues. If the light dues be not paid after the expiry of five days following the date of the seizure the Customs collector may realise the light dues and cost by selling the ship. The purchaser will acquire a good title in the ship

14 The officer whose duty it is to grant a port clearance for any ship shall not grant the port-clearance until the amount of all light-dues, expenses and costs payable in respect of the ship under this Act and of any fines imposed thereunder has been paid, or until security for the payment thereof has been given to his satisfaction

Notes—The right of the Government is safeguarded so far as the collection of the light dues are concerned. A grant of port clearance is forbidden where the ships are trying to evade the payment of light dues

15 If any dispute arises as to whether light dues, expenses or costs are payable in respect of any ship under this Act or as to the amount of such dues, expenses or costs, the dispute shall, on application made in this behalf by either of the disputing parties, be heard and determined by a Presidency Magistrate or Magistrate of the first class having jurisdiction at the place where the dispute arises, and the decision of such Magistrate shall be final

Notes—Such disputes must be decided by experienced Magistrates such as Presidency Magistrate or Magistrate of the first class

16 (1) If the master of any ship in respect of which any light dues are payable at any port causes the ship to leave such port without having paid the same, the Customs-collector at that port may by writing require the Customs-collector at any other port in British India to which the ship may proceed or in which she may be to recover the dues remaining unpaid

(2) Any Customs-collector to whom such a requisition is directed shall proceed to levy such sum as if it were payable under this Act at the port at which he is the Customs-collector and a certificate by the Customs collector at the port at which the light-dues first became payable, stating the amount payable shall be sufficient proof in any proceeding under section 13 or section 15 that such amount is payable

Notes—This facility is given for the collection of light dues. The light dues may be recovered at the next port.

17 (1) If the owner or master of a ship evades or attempts to evade the payment of any light dues, expenses or costs payable in respect of the ship under this Act, he shall on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in any port to which the vessel may proceed or in which she may be found, be punishable with fine which may extend to five times the amount of the sum payable.

(2) In any proceeding before a Magistrate in a prosecution under sub-section (1) any such certificate as is mentioned in sub-section (2) of section 16, stating that the owner or master has evaded such payment, shall be sufficient proof of the evasion unless the owner or master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable grounds for such departure.

Notes—Evasion of payment on the part of the shipowner is made penal under this section. A certificate under sub-section (2) of section 16 will be sufficient proof of such evasion. The burden of proof is cast upon the master or the owner of the ship to show that the vessel was compelled to leave the port before payment of light dues by reason of stress of weather etc.

18 The following ships shall be exempted from the payment of light dues under this Act namely—

(a) any ship belonging to His Majesty* or to a foreign Prince or State and not carrying cargo or passengers for freight or fares, and

(b) any ship of a tonnage of less than fifty tons and the [Central Government]† may by notification in the [official Gazette]‡ exempt any other ships, or classes of ships or ships performing specified voyages from such payment either wholly or to such extent only as may be specified in the notification.

Notes—Originally it was the intention of the Legislature to exempt ships altogether which were less than thirty tons.—*State sent of Objects and Reasons*. But the Select

19 Where light-dues have been paid in respect of any ship in excess of the amount payable under this Act, no claim to refund of such excess payment shall be admissible, unless it is made within six months from the date of each payment.

Notes—This section lays down the time limit of claiming the refund of any excess payment of light dues. In the original Bill the time-limit was only three months. But the Select Committee increased the period of three months to six months in order to meet the case of long voyages.

* Certain words after this repealed by G. I. Order of 1937 have been omitted.

† Substituted by G. I. Order of 1937.

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THE INDIAN LUNACY ACT, 1912

ACT NO IV OF 1912.

(Received the assent of the Governor General on the 16th March, 1912)

An Act to consolidate and amend the law relating to lunacy

WHEREAS it is expedient to consolidate and amend the law relating to lunacy. It is hereby enacted as follows —

Notes.—The Lunacy Act contemplates only the question of lunacy or sanity at the time of enquiry. There is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind. 19 C W N 45. The provisions of the Lunacy Act as amended by the Amending Acts are not exhaustive. 42 C W N 92.—A I R 1937 Cal 735.

PART I

PRELIMINARY

CHAPTER I.

Short title and extent [1 (1) This Act may be called the Indian Lunacy Act, 1912]

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas, and the Pargana of Spiti.*

Notes — Act XXIV was not applicable to a Hindu coparcener having no separate property. 23 M. L. J. 706=17 Ind. Cas. 478.

2 Nothing contained in Part II shall be deemed to affect the powers of [any High Court which is or hereafter may be "constituted by His Majesty by Letters Patent"†]† over any person found to be a lunatic by inquisition or over the property of such lunatic or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic

Definitions

3 In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum or mental hospital for lunatics established or licensed [by any Government in British India]

(2) cost of maintenance, in an asylum includes the cost of lodging of a lunatic and any to and from an asylum his behalf by [the Provincial Government] in exercise of any power conferred upon him by this Act."

[(3) "District Court means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns]**

* In Burma section 1 has been substituted by the following section 1 1 This Act may be called the Lunacy Act '.

† In British India the words within quotations have been substituted by G. I. Order of 1937.

† In Burma for the words within brackets read the words the High Court ' vide G B Order of 1937

Order of 1937
§ 1
1937

1937		by G I Order of
1937	17	the G B Order

* The words within quotations have been inserted by Act 6 of 1922

** In Burma for the words within brackets read the following (3) District Court includes the High Court as respects the area within its original jurisdiction

(4) 'criminal lunatic' means any person for whose "detention" in, or removal to an asylum jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure 1898, or of section 30 of the Prisoners Act, 1900 "or of under section 130A of the Indian Army Act, 1911 † [or of the Burma Army Act] †

(5) "lunatic" means an idiot or person of unsound mind

(6) 'Magistrate' means a [Presidency Magistrate]§ District Magistrate, Sub Divisional Magistrate or Magistrate of the first class specially empowered by [the Provincial Government]|| to perform the functions of a Magistrate under this Act

(7) "medical officer" means a gazetted [medical officer in the service of the Crown]§ and includes a medical practitioner declared by general or special order of [the Provincial Government]|| to be a medical officer for the purposes of this Act

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners and includes any person declared by general or special order of [the Provincial Government]|| to be a medical practitioner for the purposes of this Act

(9) 'prescribed' means prescribed by this Act or by rule made thereunder

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition

(11) 'relative' includes any person related by blood, marriage or adoption and

(12) 'rule' means a rule made under this Act

Clause (5) — Lunacy or insanity may be shortly defined as a defect of reason consisting either in its total or partial absence or in its pervertedness. 5 Q B 549 Since v. Steele 5 P 4 C L J 115 24 W R 521 who suffers from hallucinations a 846 8 A L J 179 A I R 1930 Lah 283 No person can have direct experience of mind of another and the proper test is the conduct 16 Pat L T 874-4 I R 1935 Pat 429

Clause (11) — The wife's brother is a relative. 22 C W N 511

PART II

RECEPTION, CARE AND TREATMENT OF LUNATICS

CHAPTER II

RECEPTION OF LUNATICS

4 (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98

Reception of persons in asylum

* The word with

†

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum

Notes—An order passed by a District Magistrate under this part is purely an executive order 73 Ind C 18 697=4 L I

Reception Orders on Petition

5 (1) An application for a reception petition shall be made by Application for reception order petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative the exact manner in which he is related to the lunatic or petitioner

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court, and if such application has been made, a certified copy of the order made thereon shall be attached to the petition

(4) No application for a reception order shall be entertained in any area [outside the Presidency-towns]* unless the [Provincial Government]† has, by notification in the [official Gazette],‡ declared such area as an area in which reception orders may be made

Notes—The application shall be made to the Magistrate within the local limits of the area. 21 C 133 The application of particulars and two medical certificates shall be maintained for any defamatory 199) 1 Q B 455 see also 35

C W N 452

6 “(1) Subject to the provisions of sub-section (3) the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from [India]§ or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented ||

(2) “If the petition is not presented by the husband or wife, or where there is no husband or wife, by the nearest relative of the

* In Burma the words within brackets have been omitted by G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for the words read the word Gazette vide G B Order of 1937

§ In Burma for India read Burma, vide G B Order of 1937

|| Substituted by Act V of 1926

alleged lunatic, the petition,* shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has within fourteen days before the presentation of the petition personally seen the said lunatic

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement

Notes—The petitioner should be the husband or wife or a relative of the alleged lunatic or in default the petitioner must explain why the petition is not presented by such person and the connection of the petitioner with the alleged lunatic and the circumstances under which the petition is presented *Halsbury Vol 19, p 53, See also 10 Bom L R 772*

7 (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates

(2) If he considers that there are grounds for proceeding further he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other enquiries of or concerning the alleged lunatic as he thinks fit

Notes—Upon the presentation of the petition the Magistrate considers it and the evidence in support of it He may (1) personally see and examine the alleged lunatic if dissatisfied with the evidence or if he considers such a course advisable or (2) he may

two daughters of the alleged lunatic a commissioner on the Munsif for an enquiry and report as to the mental condition and the capacity of the alleged lunatic and on receipt of the report to the effect that the Munsif was of opinion that the alleged lunatic is of unsound mind appointed the petitioner as guardian of the person and manager of the properties of the lunatic it was held that the proceedings could not be treated as the inquisition contemplated by the Lunacy Act 35 C W N 481

8 Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic, pending the conclusion of the inquiry

9 The petition shall be considered in private in the presence of the petitioner, the alleged lunatic, (unless the Magistrate in his discretion otherwise

directs) any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit

10 (1) At the time appointed for the consideration of the petition, the Magistrate may either make a
 Order reception order or dismiss the petition, or

may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise, as he thinks fit

(2) If the petition is dismissed the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order

Notes—When a petition is dismissed the judicial authority delivers to the petitioner a statement of his reasons for dismissing the same *Halsbury Vol 19 p 503*

11 No reception order shall be made under section 7 or section 10 save in the case of a lunatic who is dangerous and unfit to be at large, unless—
 Further provisions as to reception orders on petition

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

11A* (1) The Magistrate may, subject to the provisions of this section, by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made

to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose petition the reception order was made, and all references in this Act to such last mentioned person shall be construed accordingly

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative

* Section 11A has been inserted and 11A has been re numbered as 11B by of 1926

of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any of such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibilities under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give a preference to the person who is the nearest relative of the lunatic, unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic

(5) The Magistrate may make such order for the payment of the costs of an enquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended

11B* (1) When an arrangement has been made with any foreign European State with respect to the reception of lunatics in asylums in British India, [Central Government]† may, by notification in the [official Gazette]† direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made

(2) On publication of a notification under sub-section (1) the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely —

(a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the [Provincial Government]† in this behalf,

(b) the functions of the Magistrate shall be performed by such officer as the [Provincial Government]† may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having the jurisdiction over the alleged lunatic for all the purposes of the said provisions,

(c) for the purposes of sections 5 and 18 (1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the [Provincial Government]† may specify in this behalf;

(d) the Magistrate may in his discretion extend the period

* Section 11 B has been added by Act VII of 1916 This section has been omitted in Burma by G. B. Order of 1937

† Substituted by G. I. Order of 1937

prescribed by section 19 within which the alleged lunatic must have been medically examined, and

(c) sections 6 (1), (2), (3), 11 and 34 of the Act shall not apply,

and with such other modifications, restrictions or adaptations as the [Central Government]* may, by notification in the [official Gazette]* direct for the purpose of facilitating the application of the said provisions

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be

Reception orders otherwise than on petition

12 When any European who is subject to the provisions of the Army Act 'the Naval Discipline Act or that Act as modified by the Indian Navy Discipline 1934'† Act 'the Air Force Act' † "or the Indian Air Force Act" § has been declared a lunatic in accordance with the provisions of the military, "naval † "or air force" † regulations in force for the time being and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorised for the purpose by the [Central Government] ||

Notes —This section authorises the administrative medical officer to make a reception order in cases of lunatic soldiers

13 (1) Every officer in charge of a police station may arrest or cause to be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy Any person so arrested shall be taken forthwith before the Magistrate

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate

Notes —There was no such power under Act 36 of 1858 9 C 341=1 & 152 P C

14 Whenever any person is brought before a Magistrate under the provisions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may make such other inquiries as he thinks fit, and if the Magistrate is satisfied that such

§ Inserted by Act V of 1937
G I Order of 1937 In Burma for the words
or vide G I Order of 1937

person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person, gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative

Notes—The Lunacy Act deals specifically and under different headings with two branches of proceedings executive and judicial. An order passed by a District Magistrate under Part II is purely executive order and cannot form the subject matter of a revision. ^{app} ^{an} ^{sup} ^{by} ^{reg} ^{vers of} ^{passed} ^{for a} ^{tion is} conclusive and overrides and over rules any order which may have been passed summarily by the executive authority 73 Ind Cas 696=4 Lah 1 A person who is not under control is a person wandering at large *Morris v Atkins* (1891) 18 T L R 628 In a case where s 14 applies by reason of s 15 (3) the two provisions of s 14 will also apply if the facts are such as to attract their operation 29 S L R 431=165 Ind Cas 119-37 Cr L J 1082=A I R 1936 Sind 156 Great care should be taken before declaring a person a lunatic 5 W R (Mis) 5

15 (1) If it appears to the Magistrate, on the report of a police-

Order in case of lunatic
cruelly treated or not under
proper care and control

officer or the information of any other person, that any person within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum

Notes—This section corresponds to section 13 of the British Lunacy Act, 1890 (53 and 51 Vict c 5)

The words 'report of Police officer or the information of any other person' in

s 15 (1) are wide in their scope and there is nothing to suggest that what is required is the personal presentation of a written complaint. A I R 1935 Sind 153 29 S L R 431=37 Cr L J 108. It is not necessary although desirable to summon the relations of the lunatics. *Ibid*

16 (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or section 15 the Magistrate may, by an order in writing, authorise the detention of the alleged lunatic in suitable custody for such time not exceeding ten days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorise such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary.

Provided that no person shall be detained in accordance with the provision of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

s 16 of the Lunacy Act the Civil Surgeon is not the only medical officer. A Resident Medical Officer of a hospital who is a Gazetted Medical Officer is a Medical Officer under s 16. *Ibid*. It is not incompetent for Magistrate who has ordered detention of an alleged lunatic for a period of ten days to subsequently vary that order and shorten the period of detention under s 16 if before the expiry of ten days he is satisfied with the Medical Officer's report and the Medical Officer himself does not require full ten days. *Ibid*

17 All acts which the Magistrate is authorised or required to do by sections 14, 15 or 16 may be done by the Commissioner of Police etc. in [the Presidency town]*† by the Commissioner of Police [and all duties which an officer in charge of a police-station is authorised or required to perform may be performed in any of the Presidency towns by an officer of the police force not below the rank of an inspector] ‡

Further provision as to reception orders and medical certificates

18 (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or medical officer, as the case may be and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic distinguishing facts observed by himself from facts communicated by others, and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein.

* In British India the words "or Rangoon" have been omitted by G I Order of 1937 after this. But in Burma these words have been retained.

† In Burma for the words within brackets read the word "Rangoon" vide G B Order of 1937.

‡ In Burma the words within brackets have been omitted by G B Order of 1937.

stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath

Notes—It is not obligatory on the medical practitioner to examine the lunatic in the presence of the Magistrate *R v Whitefield* (1885) 15 Q B D 122 C A

19 (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required each person who signs a certificate, has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition and in all other cases, not more than seven clear days before the date of the order

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other

Notes—Each of the medical practitioners must examine the alleged lunatic separately from the other and each must sign a separate certificate *Id* ss 13 (3) and 29 (2) of the British Lunacy Act 1890

20 A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition for the person authorised so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order

"Provided that no reception order shall continue to have effect—
(a) after the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(b) after the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed †

Notes—This section corresponds to sections 25 (1) and 36 (3) of British Lunacy Act, 1890

21 Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted

Copy of reception order to be sent to person in charge of asylum

22 Subject to the provisions of section 85 no Magistrate shall make a reception order for the admission of any lunatic into [any Government asylum]† outside [the Province in which the Magistrate exercises jurisdiction]‡

Restriction as to asylums into which reception orders may direct admission

* The words within quotations have been inserted by Act 32 of 1923
† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for the words read the words any asylum vide Q B Order of 1937

‡ In British Burma for the words within brackets read the words British Burma, vide G B Order of 1937

*Detention of lunatics pending removal to asylum***23** When any reception order has been made under sections 7

Detention of lunatics pending
removal to asylum

10 14 or 15 the Magistrate may for reasons to be recorded in writing direct that the lunatic pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit

*Reception and detention of criminal lunatics***24** An order under section 466 or section 471 of the Code of

Reception and detention of
criminal lunatics

Criminal Procedure 1898 or under section 30 of the Prisoners Act 1900 "or under the provisions of section 103A of the Indian Army Act *† directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred

Notes—Fido 8 L B R 290=30 Ind Cas 651

Reception after inquisition

Reception after inquisition [25 A lunatic so found by inquisition may be admitted into an asylum—

(1) in the case of an inquisition under Chapter IV on an order made by, or under the authority of the High Court

(2) in the case of an inquisition under Chapter V on an order made by the District Court]†

26 (1) When any lunatic has been admitted into an asylum in

Order for payment of cost of
maintenance of lunatics

accordance with the provisions of section 25 the High Court or the District Court, as the case may be shall on the application of the person in charge of the asylum make an order for the payment of the cost of maintenance of the lunatic in the asylum and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost the Court shall certify the same instead of making such order for the payment of the cost as aforesaid

(2) An order under sub section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned

* Inserted by Act 33 of 1923

† After the words "the Indian Army Act" insert the words "or under the Burma Army

Amendment of order or certificate

27 If, after the reception of any lunatic into any asylum, on a reception order, it appears that the order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum one of whom shall be a medical officer

Notes—This section corresponds to s 31 of the British Lunacy Act 1800, see also *Lowe v Fox* (1837) 36 W R 25 H L

CHAPTER III

CARE AND TREATMENT

Visitors

28 (1) The [Provincial Government]* shall appoint for every asylum not less than three visitors one of whom at least shall be a medical officer

Appointment of visitors

(2) The Inspector-General of Prisons [where such office exists]† shall be a visitor *ex-officio* of all the asylums within the limits of his jurisdiction

29 Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic, and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof

Monthly inspection by visitors

Notes—In England visitors to lunatic asylum commonly referred to as Chancery § visiting lunatics so found by reference to whom proceedings have Vol 19, p 467

30. (1) When any person is 'detained' ‡ under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898,§ "or under the provisions of section 103A of the Indian Army Act, 1911"¶ the Inspector-General of Prisons if such person is detained † in a jail or the visitors of the asylum or any two of them, if he is "detained" ‡ in any asylum, may visit him in order to ascertain his state of mind, and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid and such Inspector-General or visitors shall make a special

* In British India the words within brackets have been substituted by G O Order of 1937

† The words within brackets have been inserted by Act 33 of 1923

‡ In Burma after the words Indian Army Act 1911 insert or under the Burma Army Act vide G B Order of 1937

(2) The Local Government may empower the officer in charge of the jail in which such person may be "detained * to discharge all or any of the functions of the Inspector-General under sub section (1)

31. (1) Three of the visitors of any asylum, of whom one shall be

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order, under section 12, or in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900

Notes—In England any three visitors of an asylum may discharge any person detained therein whether recovered or not and any two visitors on the written advice of the medical officer may discharge any person detained therein. If after two visits made at an interval of not less than seven days by two visitors (one being a medical practitioner) to a licensed house it appears to them that any patient is detained without sufficient cause they may make an order for his discharge.—*Halsbury's Laws of England*, Vol 19 p 533

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military, "naval"† or "air force"† regulations in force for the time being, or until the officer making the order applies for his transfer to the military, "naval"† or "air force"† authorities in view to his removal to England.

‡ Inserted by Act 1 of 1927

33 When any relative or friend of a lunatic detained in any asylum under the provisions of sections 14, 15, or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained and such authority, if he thinks fit in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer, and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others, may make an order for the discharge of such lunatic and such lunatic shall thereupon be discharged

Order of discharge on under taking of relative for due care of the lunatic

Notes—This section corresponds to the British Lunacy Act, 1890 (53 and 54 Vict c 5) s 79

The appropriate remedy of a lunatic's relations when he has been wrongly confined to apply under this section 29 S L R 431=A I R 1936 Sind 156=37 Cr L J 1082

34 If any lunatic detained in an asylum on a reception order made under sections 7, 10, 14, 15, or 17 is subsequently found on an inquisition under [Chapter IV or]* Chapter V, not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding discharge the alleged lunatic from the asylum

Discharge of person subsequently found on inquisition not to be of unsound mind

Notes—This section corresponds to the British Lunacy Act, 1890, s 78

Removal of lunatics

35† (1) Any lunatic may, in accordance with any general or special order of the [Provincial Government]‡ be removed from [any Government asylum]§ to any other asylum within [the province]|| or to any other asylum in any other province, with the consent of the [Provincial Government]‡ of that province ¶

Provided that no such lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner

(2) The [Provincial Government]‡ may make such general or special order as "it † thinks fit directing the removal of any person for whose "detention" ** an order has been made under section 466 or section

Removal of lunatics and criminal lunatics

OF 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words 'any asylum established in British Burma'

|| In Burma for the words 'the province' read 'British Burma,' vide G B Order of 1937

¶ In Burma for the words within quotations the following words have been substituted by G B Order of 1937 "British India with the consent of the Government concerned"

** The word within quotations has been substituted by Act 11 of 1923

omitted by G B Order of 1937

substituted in British India by G I word 'Governor,' vide G B Order

471 of the Code of Criminal Procedure, 1898, "or under section 103A of the Indian Army Act 1911"* from the place where he is for the time being "detained"† to any asylum, jail or other place of safe custody "in the province, or to any asylum, jail or other place of safety in any other province with the consent of the [Provincial Government]‡ of that province "§

Escape and re-capture

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorised by law, and in case of escape may, by virtue of such order, be re-taken by any police officer or by the person in charge of such asylum or any officer or servant belonging thereto, or any other person authorised in that behalf by the said person in charge, and conveyed to and received and detained in such asylum

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape

Notes—This section corresponds to section 85 of the English Lunacy Act, 1890 (53 & 54 Vict c 5). The re-taking is justified under an order and certificate in proper form although the person earned therein is not in fact a lunatic. *News v Seed* (1849) 3 Exch. 781—*Halsbury*, Vol 19, p 525

PART III

JUDICIAL INQUISITION AS TO LUNACY

CHAPTER IV

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS

Inquisition

[37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William Madras and Bombay]]

Jurisdiction in lunacy in Presidency towns

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[38 (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be lunatic is of unsound mind and incapable of managing himself and his affairs

Court may order inquisition as to persons alleged to be insane

Act 22 of 1922. T. D. —

of 1937

§ The words within quotations have been substituted by Act 33 of 1920

|| In Burma ss 37, 38 and 39 have been omitted by G. B. Order of 1937.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind or such other matters as to the Court may seem proper]*

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1930 Lah 987 Court should inquire of lunacy at the time of enquiry 190 W N 45
3 Ind Cas 696 13 M I A 519 The power under this section is discretionary 33
Ind Cas 857-3 L W 402 Where a person has been adjudged lunatic the presumption is that he continues to be so 33 Ind Cas 578-3 L W 790

Application by whom to be made [39 Application for such inquisition may be made by any relative of the alleged lunatic or by the Advocate General]*

Notes —Application should be made by the lunatic's nearest relation *Ex parte Person* (1828) 1 Mol 220 A member of the same tribe is not a relative 94 P R 1906

Notice of time and place of inquisition 40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual the Court may direct such substituted service of the notice as it thinks fit

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given

Notes —Where the husband or wife of the lunatic is not an applicant he or she should be served with a notice of such application *Re Rem 2 Coop temp Cott* 163 Notice contemplated by this section is a notice drawn up after an order directing an inquisition 51 C 836-31 C W N 838-103 Ind Cas 725-46 C L J 197 After service of notice inquisition can proceed *ex parte A I R 1906 Sind 203*

41 (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purposes of being personally examined by the Court or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic

(2) The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purposes of a personal examination

Notes —The Court may act under clause (2) for the convenience of the alleged lunatic *Ex parte Smith* 1 Swan 4 see also (1891) 3 Ch 271 A I R 1906 Sind 203

- 42** The attendance and examination of the alleged lunatic under the provisions of section 41 shall if the alleged lunatic be a woman who, according to the manners and customs of the country ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases

Rules respecting attendance and examination of females alleged to be lunatic

Notes—*vide* A I R 1930 Oudh 30

- [43** (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court and the inquisition cannot conveniently be made in the manner hereinbefore provided the Court may direct the inquisition to be made

Power to direct District Court to make inquisition in certain cases

before the District Court within whose local jurisdiction the alleged lunatic may be and such District Court shall accordingly proceed to make such inquisition, in the same manner as if the alleged lunatic were subject to its jurisdiction and shall certify its finding upon the matters of inquisition to the Court directing the inquisition

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon to the Court by which the inquisition was directed]*

Notes—Order dismissing petition to adjudge a person to be lunatic is not judgment 57 B 371

- [44** If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form it may either amend the same or refer it back to the Court which made the inquisition to be amended]*

Amendment of finding of District Court if defective or insufficient in form

- [45** The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44 as the case may be shall have the same effect and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the (Lunacy Supreme) Courts Act, 1858 immediately before the commencement of this Act]*

Proceedings on finding of Court

Judicial powers over person and estate of lunatic

- [46** (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates

Custody of lunatics and management of their estates

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of

* In Burma sections 43 to 55 have been omitted by G B Order of 1937

lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic]*

Notes—Sub section (2) corresponds to s 98 (2) of the British Lunacy Act 1890. In England such a finding constitutes the patient a lunatic so found by inquisition for all purposes connected with the management or administration of his estate. *Halsbury Vol 19 pp 422, citing Re Townshend's Settlement (1908) 1 Ch 201*

A grant of the custody of the lunatic to two persons jointly is unusual and inconvenient. *Ex parte Ludlow (1731) 2 P Wms 635 Halsbury Vol 19 p 424*

[47 The Court, on the appointment of a manager of the estate

Powers of manager in respect of management of lunatic's estate of a lunatic, may direct by the order of appointment, or by any subsequent order,

that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immovable, of which the estate may consist

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immovable property of the lunatic, or

(b) lease any such property for a term exceeding five years

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose]*

Notes—A manager cannot without the leave of the Court alienate the lunatic's property. This section corresponds to sect on 29 of the Guardians and Wards Act. As regards the powers of a guardian of property appointed by a Court *vide 61 P R 1918 23 A 288 23 C W N 634 44 Ind Cas 554 19 B 96*. A lease not exceeding five years can be granted *54 Ind Cas 19*. In the application the real price of the property should be stated *46 Ind Cas 542*. It is necessary and indeed essential that before taking charge of any of the properties of the supposed lunatic the person appointed as receiver should furnish adequate security *42 C W N 92=A I R 1937 Cal 735*

[48 The Court may, on application made to it by petition concern-

Power to make order concerning any matter connected with the lunacy

ing any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circum-

stances, it thinks fit]*

Notes—It seems that this section contemplates an order of revocation of an order declaring a person a lunatic

Management and Administration

[49 The Court may if it appears to be just or for the lunatic's

Power to dispose of lunatic's property for certain purposes

benefit, order that any property, moveable or immovable of the lunatic and whether in possession reversion remainder, or

contingency, be sold, charged mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes namely—

(1) the payment of the lunatic's debts or engagements,

(2) the discharge of any encumbrance on his property,

(3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit,

* In Burma sections 43 to 55 have been omitted by G. B. Order of 1937.

(4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto .

(5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court]*

[50 (1) The manager of the lunatic's estate shall, in the name and on behalf of the lunatic, execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

Execution of conveyances and powers by manager under order of Court

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever, vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian]*

Notes —A sale of a lunatic's property by the manager without the order or knowledge of the Court is void and could not be ratified 1 Lah 109 55 Ind Cas 865

[51 Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper]*

Court may order performance of contract

Notes —This section corresponds to s 129 (1) of the English Lunacy Act

[52 (1) Where a person being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners or of any person who appears to the Court to be entitled to require the same, dissolve the partnership

Dissolution and disposal of property of partnership on a member becoming lunatic

(2) Upon such dissolution or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper]*

[53 Where a lunatic has been engaged in business, the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct]*

Disposal of business premises

[54 Where a lunatic is entitled to a lease, or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager

Manager may dispose of lease

* In Burma sections 43 to 55 have been omitted by G B Order of 1937

of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration and upon such terms, as the Court thinks fit]*

Notes—This section corresponds to section 120 (f) of the English Lunacy Act 1800 (53 and 54 Vict c 5) See also *Ex parte Jormyn* (1788), 3 Swan 131 n

[55] If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court, which, by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management.

Provided that—

(1) in such case no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid,

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of the management, shall be disposed of from time to time in such manner as the High Court may direct

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section]*

Notes—15 Ind Cas 265

56 (1) If it appears to the Court having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof when realised, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person

Vesting orders

[57] Where any stock or Government securities or any share in a company, (transferable within British India or the dividends of which are payable there), is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is

Power to order transfer of stock belonging to lunatic in certain cases

* In Burma section 43 to 56 have been omitted by G B Order of 1937.

out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs]*

[58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares, or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit]*

General

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid

[60 (1) When any person has been found under this Chapter to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit]*

[61 The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy]*

* In Burma Sections 57, 58, 60 and 61 have been omitted by G. B. Order of 1937.

CHAPTER V

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY TOWNS

Inquisition

62 Whenever any person [not subject to the jurisdiction of any

Power of District Court to institute inquisition as to persons alleged to be lunatic of the Courts mentioned in section 37]* is possessed of property and is alleged to be a lunatic the District Court, within whose jurisdiction such person is residing may upon application by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs

Notes—A brother's wife who is a relative under s 3 (11) can apply for inquisition under this section 22 C W N 547-27 C L J 205=43 Ind Cas 511 Section 101 of the C P Code is applicable to proceedings under the Lunacy Act and consequently a District Judge is competent to take proceedings on the basis of an application under the section if such application is duly verified as provided for in the C P Code 22 C W N 547-27 C L J 205=43 Ind Cas 511 Under this section residence of the most

Lunacy

63 (1) Application for such inquisition may be made by any

Application by whom to be made relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841, (hereinafter referred to as the Curator) or by the Government Pleader as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land by the Collector of the District in which it is situate

[(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate s to the jurisdiction of the Court made by the Collector on behalf of t

* The words within brackets have been omitted by G B Order of 1937 in Burma
† In Burma sub section (2) has been omitted by G B Order of 1937

Notes.—Curator means public Curator appointed under the Succession Act. A. I. R. 1933 Lab. 626=146 Ind. Crs. 553

64 The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate

Regulation of proceedings of District Courts

Inquisition by District Court and finding thereon

65 (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs but that he is capable of managing himself and is not dangerous to himself or to others

Notes.—In an application for appointment of guardian, the Judge has no right or jurisdiction to delegate his functions to third person as arbitrator. For ascertaining whether a person is a lunatic he can take *ex parte* evidence. He can also appoint a commissioner to help him to form a definite view upon a particular issue but he must retain the judicial function in his own person. 43 A 459=9 A L J 334=62 Ind Cas 430. Under this Act what the Courts have to decide is whether the person before them is of unsound mind so as to be incapable of managing himself and his affairs and under this unsound mind so as to be incapable or to others. 90 Ind Cas 878=30 A L J 111 and incapable of managing himself and his affairs. N L R 224=148 I C 462 A

judgment under this section is binding upon the parties thereto. 56 M 904=1933 M W. N. 514=53 L W 135=A I R 1933 Mad 621=65 M L J 279

66 (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a Commission to any subordinate Court to make the inquisition and such subordinate

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter

(2) On the completion of the inquisition, the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case, and the District Court shall thereupon proceed to dispose of the application in the manner

Provided that the District Court may make such further order as it may think fit in disposing of the application

Court before

Judicial powers over person and estate of lunatic

Custody of lunatics and management of their estates

67 (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others the Court may make

orders, as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic

Notes—Under the Lunacy Act, the Court has no power to award costs to an unsuccessful applicant out of the estates of the alleged lunatic even though the application is *bona fide* and in the best interest of the lunatic 152 Ind Cas 882=1934 M W N 1259=40 L W 710=67 M L J 797

[68 If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards the Court of Wards shall be authorised to take charge of the same]*

Court of Wards to be authorised in certain cases to take charge of estate of lunatic

69 (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land [but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards,]† the District Court may direct the Collector to take charge of the person and estate of the lunatic

Power to direct Collector to take charge of person and estate of lunatic in certain cases

Provided that no such order shall be made without the consent of the Collector previously obtained

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic

70 All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the [Provincial Government]‡ or of such authority as it may appoint in this behalf

Control over proceeding of Collector

71 (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person

Power of District Court to appoint guardian and manager and take security from manager

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the [High]§ Court under sections 56 and 59

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic

Notes—A person who

lunatic is entitled to the joint property
7 M L J 661 In
Nag 93

* In Burma section 68 has been omitted by C. B. O. 3 of 1927

72 The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be for reasons to be recorded in writing considers that such an appointment is for the benefit of the lunatic

Restriction on appointment of legal heir of lunatic to be guardian of his person

Notes—This section does not apply where near relatives only can be appointed guardians of lunatic 85 Ind Cas 216=A I R 1925 Oudh 612 No preference is to be given to legal heir where he will be benefited by his (lunatic's) death A I R 1934 Rang 164

73 A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties

Remuneration of managers and guardians

74 (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance

75 (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic

Powers of manager

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale gift, exchange or otherwise any immoveable property of the lunatic

(b) lease any such property for a term exceeding five years Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic

Notes—When there is no provision in the order of appointment of joint managers for the estate of the lunatic the office of the survivor manager terminates on the death of the co managers 61 C 926=60 C L J 11=39 C W N 1051

76 (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or moveable property, as he may receive on account of the together with a statement of all debts due by or to the same.

Manager to furnish inventory and annual accounts

(2) Every such manager shall also furnish to the C

Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands

77 If any relative of the lunatic or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit, or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector

Notes—Where accounts filed by a manager is impugned some enquiry should be held. In passing orders under this section the Judge should record reasons as the orders passed is an appealable order. A I R 1936 Rang 51=161 Ind Cas 591. The order passed under s 77 simply to the effect that the accounts are passed obviously implies that the objection to the accounts are rejected and hence an appeal lies to the High Court under s 83 of the Act. 161 Ind Cas 591—A I R 1936 Rang 51

78 All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882* unless the Court or the Collector, as the case may be, for reasons to be recorded in writing directs that such sums be in the interests of the lunatic otherwise invested or applied

79 Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate

80 (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him and may appoint any other fit person in place of such manager or guardian, and the District Court, on the

application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him

Notes—The District Court has no power under Chapter V of the Act, to alienate any portion of the lunatic's property where a manager of the lunatic's estate has been appointed and has not been removed under this section 8 P R 1919-52 Ind Cas 609. Curator not appointed under the Indian Succession Act can be removed by Court A I R 1933 Lah 626

81 The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realise such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property

Notes—It is doubtful whether order imposing fine on guardian for contumacious conduct is decree under Sch II Act 2 Court Fees Act 150 Ind Cis 664=36 P L R 179=A I R 1934 Lah 853

82 (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such

Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs

(2) The inquiry shall, as far as may be, conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and

inatic has come
prescribed by
relating to his

Appeals.

83 An appeal shall lie to the High Court from any order made by a District Court, under this Chapter

Notes—Order rejecting application for custody is appealable 40 L W 712=A I R. 1934 Mad 724=67 M L J 861

PART IV MISCELLANEOUS

CHAPTER VI

ESTABLISHMENT OF ASYLUMS

84 The [Provincial Government]* may establish or license the establishment of asylums at such places as it thinks fit if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases†

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

† The words within quotations have been inserted by Act 6 of 1922

84A.* "If in any licensed asylum no provision for curative treatment has been made, or the [Provincial Government]† considers that the provision made is insufficient, the [Provincial Government]† may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the [Provincial Government]† may revoke the license"

Power to cancel license if provision for curative treatment is insufficient

ment has been made, or the [Provincial Government]† considers that the provision made is insufficient, the [Provincial Government]† may require the person in

charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the [Provincial Government]† may revoke the license"

85 ‡ The Magistrate or Courts exercising jurisdiction [in any province]§ may send lunatics or any class of lunatics to any asylum situate in [any other province]§ in accordance with any general or special order of the [Provincial Government]† made in that behalf with the consent of the ["Provincial Government"]|| of such other province]¶

Provision for admission of lunatics in asylums outside a province

or Courts exercising jurisdiction [in any province]§ may send lunatics or any class of lunatics to any asylum situate in [any other province]§ in accordance with any general or special order of the [Provincial

Government]† made in that behalf with the consent of the ["Provincial Government"]|| of such other province]¶

CHAPTER VII

EXPENSES OF LUNATICS

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25 and no engagement has been taken from the friends, or relatives of the lunatic or order made by the Court for the payment

Payment of cost of maintenance in licensed asylums in certain cases by Government

of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf and any moveable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application of property in the possession of a lunatic found wandering

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the recep-

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him

tion order made under section 14, section 15 or section 17 has an estate applicable to his maintenance or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the recep-

* Section 84A has been inserted by Act 6 of 1922

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor," vide G. B. Order of 1937

Act 88 of 1920

substitute "under this Act," and for "any other

vide G. B. Order of 1937

within brackets read the words "Government"

tion order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic

Notes — Under this section if the father as the son as a member thereof In natic within the meaning of this

89 (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the costs of the application out of such estate or from such person

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned,

Notes — Under this section the Court has to determine whether the father has the means to maintain the son 51 B 120—29 Bom L R 62—100 Ind Cas 595—A I R 1927 Bom 91

[89A.* (1) In computing the amount payable on account of the cost of maintenance of lunatics detained in any asylum for the costs of whose maintenance any Provincial Government is liable charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act, 1935, the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor General in Council in force immediately before that date and applicable to this case]

89B† (1) When under the provisions of this Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable —

(a) in the case of a lunatic not domiciled in British India, by the [Provincial Government]‡ of the province in which the reception order or the order under section 25, as the case may be, was made, and

(b) in the case of a lunatic domiciled in British India by the [Provincial Government]‡ of the province in which the lunatic has

* In British India s 89A has been substituted by G I Order of 1937 In Burma this section has been omitted by G B Order of 1937

† Added by Act VI of 1929 But this section is not in force in Burma, vide G B Order of 1937

‡ Substituted by G I Order of 1937.

last resided for a period of five years before the reception order or the order under section 25 as the case may be, was made, or, if the lunatic has not been resident in any one province for such period by the [Provincial Government]* of the province in which such order was made †

Saving of liability of relatives to maintain lunatic

90 The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act

CHAPTER VIII

RULES.

Power of Provincial Government to make rules

91 (1) The [Provincial Government]‡§ may make rules for all or any of the following purposes, namely -

(a) to prescribe forms for any proceeding under this Act other than a proceeding before [a High Court which is or may hereafter be constituted by His Majesty by Letters Patent §] ||

(b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16

(c) to regulate the detention ¶ care, treatment and discharge of criminal lunatics

(d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another,

(e) to regulate the transfer of criminal lunatics to asylums,

(f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government

(g) to prescribe the [Government asylums]** [within the province]†† to which lunatics from any area or any class of lunatics shall be sent,

(h) to prescribe conditions subject to which asylums may be licensed,

(i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act

(2) In making any rule under this section, the [Provincial Governments]‡ may direct that a breach of it shall be punishable with fine which may extend to fifty rupees

Notes—*I* vide 15 Lah 480 A I R 1931 Lah 148 51 B 120

92 All rules made under section 91 shall be published in the [official Gazette]‡‡ and shall thereupon have effect as if enacted in this Act

Publication of rules

†
1937
§
||
Court
•
••
1937
††
of 1937

Order of
of 1937

the High

Order of
nment
B Order

•• The words within brackets have been substituted in British India by G. I Order of 1937 In Burma for these words read the word Gazette, vide G. B Order of 1937

CHAPTER IX

SUPPLEMENTAL PROVISIONS.

Penalty for improper reception
or detention of lunatic

93 Any person who—

(a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(b) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

94 The provisions of Chapter XLII of the Code of Criminal Procedure, 1898,* shall, so far as may be, apply to bonds taken under this Act.

95. (1) When any sum is payable in respect of pay, pension, gratuity or other similar allowance to any person [by the Secretary of State or any Government in British India]† and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus if any, or such part thereof as he thinks fit for the maintenance of such members of the lunatic's family as are dependent, on him for maintenance.

(2) [The Secretary of State or, as the case may be, the Government concerned]‡ shall be discharged of all liability in respect of any amounts paid in accordance with this section

96 Subject to any rule, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98 Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of [British India]§ in the exercise of jurisdiction conferred by His Majesty or [the Central Government or the Crown Representative or by the law of Burma]||

* Act V of 1898

† In British India the words within brackets have been substituted by G. I. Order 1937 "by Government"

‡ In British India the words within brackets have been substituted by G. I. Order 1937 "The Secretary of State, and

§ In British India the words within brackets have been substituted by G. I. Order 1937 "British Burma," vide G. B. Order

|| In British India the words within brackets have been substituted by G. I. Order 1937 In Burma for these words read the word "Governor," vide G. B. Order of 1937

99. The [Provincial Government]* may make rules regulating the procedure for the reception and detention in asylum [in "the Province"†]‡ of lunatics whose reception and detention are provided for by section 98

Power to make rules for reception of lunatics received from outside British India

100 (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf

[100A The powers conferred by this Act upon the Provincial Government shall, in relation to the Ranchi European Mental Hospital, be powers of the Central Government]§

101. [Repealed by Act XVII of 1914]

SCHEDULE I.

FORMS
(See section 96)

FORM 1

(Application for Reception Order See sections 5 and 6)

In the matter of A B || residing at _____, by occupation _____, son of _____, a person alleged to be a lunatic
To "Presidency Magistrate, for _____ [or * District Magistrate of, _____ or Sub Divisional Magistrate, for _____ or Magistrate specially empowered under Act IV of 1912 for _____]
The petition of C D || residing at _____, by occupation _____, son of _____ in the town of _____ [or sub division of _____ in the district of _____]
1. I am _____ ** years of age
2 I desire to obtain an order for the reception of A B as a lunatic in the asylum of _____ situate at††

* In British India the words within brackets have been substituted by G. I Order of 1937 In Burma for these words read the word Governor, † vide G B Order of 1937.

† The words within quotations have been substituted by Act 39 of 1920

‡ In Burma the words within brackets have been omitted by G B Order of 1937.

§ In British India section 100A has been substituted by G I Order of 1937. This section is not in force in Burma

|| Full name, caste and titles

‡ In Burma the words Presidency Magistrate for or * has been omitted by G B Order of 1937

** Enter the number of completed years The petitioner must be at least eighteen or twenty-one whichever is the age of majority under the law to which the petitioner is subject

†† Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum

3 I last saw the said A B at _____ on the _____ day of _____

4 I am that _____ of the said A B _____

[Or if the petitioner is not a relative of the patient state as follows —]

I am not a relative of the said A B The reasons why this petition is not presented by a relative are as follows [State them]

The circumstances under which this petition is presented by me are as follows [State them]

y of
f the

been

made previous to this application

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement (Sd) C D

The statements contained or referred to in paragraphs _____ are true to my knowledge , the other statements are true to my information and belief

Dated _____ (Sd) C D

Statement of particulars

[If any of the particulars in this statement is not known the fact to be so stated]

The following is a statement of particulars relating to the said A B —

Name of patient at length

Sex and age

Whether this is first attack of lunacy

Age (if known) on first attack

When and where previously under care and treatment as a lunatic.

Duration of existing attack

Supposed cause

Whether the patient is subject to epilepsy

Whether suicidal

Whether the patient is known to be suffering from phthisis or any form of tubercular disease

Whether dangerous to others and in what way

Whether any near relative (stating the relationship) has been afflicted with insanity

Whether the patient is addicted to alcohol or the use of opium ganja charas bhang cocaine or other intoxicant

(The statements contained or referred to in paras _____ are true to my knowledge The other statements are true to my information and belief

[Signature of person making the statement]

FORM 2

Reception Order on Petition

(See sections 7-10)

I the undersigned L F _____ being a Presidency Magistrate of _____ [or § the District Magistrate of _____ or the Sub Divisional Magistrate of _____ or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of C D of _____ in the matter of A B, a lunatic accompanied by the medical certificates of G H a medical officer, and of J K a medical practitioner or medical officer] under the said Act hereto annexed

ve,
he

part

exact relationship

§ In Burma the words a Presidency Magistrate of or has been omitted by G B Order of 1937

|| Address and description

hereby authorise you to receive the said A B into your asylum And I declare that I have [or have not] personally seen the said A B before making this order
(Sd) E F
Designation as above
To*

FORM 3
Medical Certificate
(See sections 18 19)

In the matter of A B of † in the town of [or the sub division of in the dist I th 1 to be medical officer under Act IV of 1912] practitioner under Act IV of 1912] and I am in the actual practice of the medical profession
2 On the day of 19 at§ in the town village of [or the sub divis on of in the district of (separately from any other practitioner) | I personally examined the said A B and came to the conclusion that the said A B is a lunatic and a proper person to be taken charge of and detained under care and treatment
(Sd) C D
(Designation as above)

FORM 4
Reception Order in case of lunatic soldier
(See section 12)

Whereas it appears to me that A B, a European subject to the Army Act who has been declared a lunatic in accordance with the provisions of the military regulations should be removed to an asylum I do hereby authorise you to receive the said A B into your asylum
(Sd) E F
Administrative Medical Officer

FORM 5

Reception Order in case of wandering or dangerous lunatic or lunatics not under proper control or cruelly treated (sent to an asylum established by Government)
(See sections 14 15 17)

I, C D Presidency Magistrate of [or ** Commissioner of Police for] [or the District Magistrate of or the Sub Divisional Magistrate of or a Magistrate specially empowered by Government under Act IV of 1912] having caused A B to be examined by E F, a Medical Officer under the Indian Lunacy Act 1912 and being satisfied that A B [describing him] is a lunatic who was wandering at large [or is a person dangerous by reason of lunacy] [or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment hereby direct you to receive the said A B into your asylum
(Sd) C D
(Designation as above)

Dated the To the Officer in Charge of the asylum at

* To be addressed to the officer or person in charge of the asylum
† Insert residence of patient
‡ Insert qualification to practise medicine and surgery registrable in the United Kingdom

FORM 6

Same when sent to a licensed asylum

I, C D, [as above down to 'care and treatment'] and being satisfied with the engagement entered into in writing by G H of [here insert address and description] who has desired that the said A B may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A B in the said asylum hereby authorise you to receive the said A B into your asylum

(Sd) C D

(Designation as above)

Dated the

To the person in charge of the asylum at

FORM 7

Bond on the making over of a lunatic to the care of a relative or friend

(See sections 14 15 17)

Whereas A B son of , inhabitant of , has been brought up before C D, 'a Presidency Magistrate for the town of [or ' * Commissioner of Police for] [or the District Magistrate of or a Sub Divisional Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E F, son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police] that the said A B may be delivered to my care

I E F abovenamed hereby bind myself that on the said A B being made over to I from doing hereby bind

(Sd) E F

[Where a bond with sureties is to be executed add]—We do hereby declare ourselves sureties for the abovenamed E F that he will on the aforesaid A B being made over to his care have the said A B properly taken care of and prevented from doing injury to himself or to others and in case of the said E F making default therein we bind ourselves jointly and severally to forfeit to His Majesty the King Emperor of India the sum of rupees

Dated this

day of

19

(Signature)

FORM 8

Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care

(See section 33)

Whereas A B son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C D 'a Presidency Magistrate for the town of [or ' * Commissioner of Police for] [or the

D strict Magistrate of

Sub Divisional or a Magistrate of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912 and whereas I E F son of , inhabitant of , have applied to the said Magistrate [or Commissioner of Police] that the said A B may be delivered to my care and custody

I hereby bind myself that on the said A B being made over to my care and custody,

(
)

selves sureties for the abovenamed E F that he will on the aforesaid A B being delivered to his care and custody have the said A B properly taken care of and prevented from doing injury to himself or to others and in case of the said E F making default therein we bind ourselves jointly and severally to forfeit to His Majesty the King Emperor of India the sum of rupees

Dated this

day of

19

(Signature)

SCHEDULE II

[Repealed by Act XVII of 1914]

* In Burma the words 'a Presidency Magistrate for the town of or ' have omitted by G B Order of 1937

THE MAINTENANCE ORDERS ENFORCEMENT ACT. (XVIII OF 1921)

CONTENTS

PREAMBLE

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| 2 | Definitions | 8 | Enforcement of maintenance orders |
| 3 | " | 9 | Payment of charges for transmission of sums awarded as maintenance and other costs and charges |
| 4 | " | 10 | Proof of documents signed by officers of Court |
| 5 | Transmission of maintenance orders made in British India | 11 | Depositions to be evidence |
| 6 | Power of Summary Courts to make provisional maintenance orders against persons resident in His Majesty's Dominions out of British India | 12 | Rule making power |

THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1921

ACT NO XVIII OF 1921

PASSED BY THE GOVERNOR GENERAL IN COUNCIL

(Received the assent of the Governor-General on the 5th October, 1921)

An Act to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*

WHEREAS it is expedient to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa* It is hereby enacted as follows —

clear express on in the enacting part thereof 18 C L J 187 11 A 260 14 A 145
45 C 313

Short title and extent

1 (1) This Act may be called the Maintenance Orders Enforcement Act, 1921

(2) It extends to the whole of British India, including the Sonthal Parganas and British Baluchistan

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

"Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Majesty's Dominions in which the maintenance order is made

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made,

"prescribed" means prescribed by rules made under this Act,

"proper authority" means the authority appointed by, or under the law of, reciprocating territory to receive and transmit documents to which this Act applies, and

"reciprocating territory" means any part of His Majesty's Dominions outside British India in respect of which this Act for the time being applies

Notes—A definition clause is always to be read subject to context

3 (1) If the Governor-General in Council is satisfied that Reciprocal arrangements provisions have been made by the Legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by Courts in British India, the Governor-General in Council may, by notification in the *Gazette of India*, declare that this Act applies in respect of that part of His Majesty's Dominions and thereupon it shall apply accordingly

(2) The Governor-General in Council may, by like notification declare that this Act applies in respect of any British protectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory

Notes—The object of this enactment appears to be that persons against whom maintenance order has been passed by any Court in any part of His Majesty's Dominions should not be allowed to avoid this liability by residing in any other part of His Majesty's Dominions

4 (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Governor-General, the Governor-General in Council shall send a copy of the order to the prescribed officer of a Court in British India for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the Governor General in Council, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in his opinion, a Court of superior jurisdiction be a Court of summary jurisdiction

5 Where a Court in British India has, whether before or after the commencement of this Act, made a maintenance order against a person and it is proved to that Court

Transmission of maintenance orders made in British India

person

against whom the order was made is resident in a reciprocating territory, the Court shall send to the Governor-General in Council, for transmission to the proper authority of that territory, a certified copy of the order

by a Presidency
This section has
the enactment of
the procedure laid down
in this section

6 (1) Where application is made to a Court of summary jurisdiction in British India for a maintenance

Power of Summary Courts to make provisional maintenance orders against persons resident in His Majesty's Dominions outside British India

order against any person, and it is proved that that person is resident in a reciprocating territory the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the

application make any such order as it might have made if that person had wilfully neglected to attend the Court but in such case the orders shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to and signed by him

(3) Where such an order is made the Court shall send to the Governor General in Council, for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence that Court shall after giving the prescribed notice proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application

(5) If it appears to the Court hearing such evidence that the order ought not to have been made the Court may rescind the order but in any other case the depositions shall be sent to the Governor-General in Council and dealt with in like manner as the original depositions

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order

Provided that on the making of a varying or rescinding order the Court shall send a certified copy thereof to the Governor General in Council for transmission to the proper authority of the reciprocating territory in which the original order was confirmed or to which it was sent for confirmation and that, in the case of an order varying the

original order, the order shall not have any effect unless and until confirmed in like manner as the original order

Notes—This section confers jurisdiction to a Court of British India even where the person against whom an order is sought to be passed is resident outside British India and in a reciprocating territory. But in such a case only a provisional maintenance order is to be passed

7 (1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in British India, and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Governor-General and it appears to the Governor-General in Council that the person against whom the order has been made is resident in British India the Governor-General in Council may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition the Court shall issue such a summons and cause it to be served upon such person

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in exercise of its original criminal jurisdiction

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India, confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just.

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court may for that purpose send a certified copy of the record to the Governor-General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may

(6) Where a provisional order has been made by the confirming Court, and where on an

for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the Governor-General in Council for transmission to that Court through the proper authority of the reciprocating territory and may adjourn the proceedings

Notes—This section lays down the procedure how a provisional order passed by a Court in a reciprocating territory is to be confirmed

8 (1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed

Notes—An order which is registered either in a High Court or in a Court of summary jurisdiction is deemed to be an order by such Court although it is passed by a Court in a reciprocating territory

9 A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as such other costs and charges as may be awarded or levied by the Court

Notes—The cost of transmission is to be borne by the person against whom the order is passed

10 For the purposes of this Act any document purporting to be signed by a Judge or officer of a Court outside British India shall until the contrary is proved be deemed to have been so signed without proof of the signature of judicial or official character of the person appearing to have signed it and the officer of a Court by whom a document is signed shall until the contrary is proved be deemed to have been the proper officer of the Court to sign the document

Notes—This section should be read as supplemental to the Indian Evidence Act

11 Depositions taken in a Court in any reciprocating territory may for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act

Notes—This section should be read as supplemental to the Indian Evidence Act

12 The Governor-General in Council may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed

Notes—All such rules have the force of law

THE MANOEUVRES, FIELD FIRING AND ARTILLERY PRACTICE ACT (V OF 1938) CONTENTS

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1 Short title and extent

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MANOEUVRES

2 Powers of Provincial Government to authorise manoeuvres

3 Powers exercisable for purposes of manoeuvres

4 Duty of Officer Commanding to repair damage

5 Right to compensation for damage caused by manoeuvres

6 Method of assessing compensation

7 Offences

SECTIONS

CHAPTER II

FIELD FIRING AND ARTILLERY PRACTICE

8 Definitions

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GENERAL

13 Power to make rules

THE MANOEUVRES, FIELD FIRING AND ARTILLERY PRACTICE ACT, 1938 (ACT V OF 1938)

(Received the assent of the Governor-General on the 12th March 1938)

An Act to provide facilities for Military Manoeuvres and for Field of Firing and Artillery Practice

WHEREAS it is expedient to provide facilities for military manoeuvres and for field firing and artillery practice, It is hereby enacted as follows —

Short title and extent

1 (1) This Act may be called the Manoeuvres Field Firing and Artillery Practice Act 1938

(2) It extends to the whole of British India

CHAPTER I

MANOEUVRES

2 (1) The Provincial Government may, by notification in the local official Gazette authorise the execution of military manoeuvres over any area specified in the notification during a specified period not exceeding three months

Power of Provincial Government to authorise manoeuvres

Provided that the same area or any part thereof shall not ordinarily exceed three years

to its intention possible in its execution shall be issued until the expiry of three months from the date of the first publication of such notice in the local official Gazette

(3) The notice required by sub-section (2) shall be given by publication in the local official Gazette and shall also be given throughout the area which it is proposed to specify in the notification by publication in the manner prescribed by rules made under section 13, and shall be repeated by like publication one month and one week as nearly as may be before the commencement of the manœuvres

3 (1) Where a notification under sub-section (1) of section 2 has been issued such persons as are included in the military forces engaged in the manœuvres may, within the specified limits and during the specified periods,—

(a) pass over or uncamp construct military works of a temporary character or execute military manœuvres on, the area specified in the notification and

(b) supply themselves with water from any source of water in such area

Provided that nothing herein contained shall authorise the taking of water from any source of supply, whether belonging to a private owner or a public authority of an amount in excess of the reasonable requirements of the military forces or of such amount as to curtail the supply ordinarily required by those entitled to the use of such water supply

(2) The provisions of sub-section (1) shall not authorise entry on or interference with any well or tank held sacred by any religious community or any place of worship or ground attached thereto except for the legitimate purpose of offering prayers on any place or building reserved or used for the disposal of the dead or any dwelling house or premises attached thereto or any educational institution, factory workshop or store or any premises used for the carrying on of any trade, business or manufacture or any garden or pleasure ground, or any ancient monument as defined in section 2 of the Ancient Monuments Preservation Act 1904

4 The Officer in Command of the military forces engaged in the manœuvres shall cause all lands used under the powers conferred by this Chapter to be restored, as soon and as far as practicable to their previous condition

5 Where a notification issued under section 2 authorises the execution of military manœuvres compensation shall be payable from the Defence Estimates for any damage to person or property or interference with rights or privileges arising from such manœuvres including expenses reasonably incurred in protecting person property rights and privileges

6 (1) The Collector of the district in which any area utilised for the purpose of manœuvres is situated shall depute one or more Revenue Officers to accompany the forces engaged in the manœuvres for the purpose of determining the amount of any compensation payable under section 5

(2) The Revenue Officer shall consider all claims for compensation under section 5 and determine, on local investigation and where possible after hearing the claimant the amount of compensation, if

any, which shall be awarded in each case, and shall disburse on the spot to the claimant the compensation so determined as payable

(3) Any claimant, dissatisfied with a refusal of Revenue Officer to award him compensation or with the amount of compensation awarded to him by the Revenue Officer, may, at any time within fifteen days from the communication to him of the decision of the Revenue Officer, give notice to the Revenue Officer of his intention to appeal against the decision

(4) Where any such notice has been given, the Collector of the district shall institute a commission consisting of himself as chairman, a person nominated by the Officer Commanding the forces engaged in the manœuvres, and two persons nominated by the District Board, and the commission shall decide all appeals of which notice has been given

(5) The commission may exercise its powers notwithstanding the absence of any member of the commission, and the chairman of the commission shall have a casting vote in the case of an equal division of opinion

(6) The decision of the commission shall be final and no suit shall lie in any Civil Court in respect of any matter decided by the commission

(7) No fee shall be charged in connection with any claim, notice, appeal, application or document filed before the Revenue Officer, Collector or the Commission under this section

7 If within the area and during the period specified in a notification under sub-section (1) of section 2, any person—

Offences

(a) wilfully obstructs or interferes with the execution of the manœuvres, or

(b) without due authority enters or remains in any camp, or

(c) without due authority interferes with any flag or mark or any apparatus used for the purposes of the manœuvres,

he shall be punishable with fine which may extend to ten rupees

CHAPTER II

FIELD FIRING AND ARTILLERY PRACTICE

Definitions

8 In this Chapter—

(a) "field firing" includes air armament practice,

(b) "notified area" means an area defined in a notification issued under sub-section (1) of section 9

9. (1) The Provincial Government may, by notification in the local official Gazette, define any area as an area within which for a specified term of years the carrying out periodically of field firing and artillery practice may be authorised

Power of Provincial Government to authorise field firing and artillery practice

(2) The Provincial Government may, by notification in the local official Gazette, authorise the carrying out of field firing and artillery practice throughout a notified area or any specified part thereof during any period or periods specified in the notification

(3) Before any notification under sub-section (2) is issued, the Provincial Government shall publish notice of its intention to issue such notification as early as possible in advance of the issue of the notification, and no such notification shall be issued until expiry of two months from the date of the first publication of the notice in the local official Gazette

(4) The notice required by sub-section (3) shall be given by publication in the local official Gazette and shall also be given throughout the notified area by publication in some newspaper circulating in and in the language commonly understood in that area and by beat of drum and by affixation in all prominent places of copies of the said notice in the language of the locality and in such other manner as may be prescribed by rules made under section 13 and shall be repeated by like publication one week as nearly as may be before the commencement of the period or of each period specified in the notification

Provided that the fact of the said beat of drum and affixation shall be verified in writing by one headman and two other literate inhabitants of the locality and provided further that such notice by the beat of drum shall be given seven and two days as nearly as may be before the commencement of such field firing and artillery practice

10 (1) Where a notification under sub-section (2) of section 9 has been issued, such persons as are included in the forces engaged in field firing or artillery practice may, within the notified area or specified part thereof during the specified period or periods,—

(a) carry out field firing and artillery practice with lethal missiles, and

(b) exercise, subject to the provisions of sections 3 and 4, any of the rights conferred by section 3 on forces engaged in military manœuvres

Provided that the provisions of sub-section (2) of section 3 shall not debar entry into, or interference with, any place specified in that sub-section if it is situated in an area declared to be a danger zone under sub-section (2) of this section to the extent that may be necessary to ensure the exclusion from it of persons and domestic animals

Provided further that in the case of a dwelling house occupied by women adequate warning shall be given through a local inhabitant and entry shall be effected after such warning in the presence of two respectable inhabitants of the locality

(2) The Officer commanding the forces engaged in any such practice may, within the notified area or specified part thereof, declare any area to be a danger zone and thereupon the Collector shall, on application made to him by the Officer commanding the forces engaged in the practice, prohibit the entry into and secure the removal from domestic animals during the times is taking place or there is danger

11 The provisions of sections 5 and 6 shall apply in the case of field firing and artillery practice as they apply in the case of military manœuvres

Compensation
Provided that the compensation payable under this section shall include compensation for exclusion or removal from any place declared to be a danger zone of persons or domestic animals, such compensation to be disbursed at not less than the minimum rates prescribed by rules made under section 13 before the exclusion or removal is enforced, and shall also include compensation for any loss of employment or deterioration of crops resulting from any such exclusion or removal

12 If, during any period specified in a notification issued under sub-section (2) of section 9, any person
 Offences within a notified area—

(a) wilfully obstructs or interferes with the carrying out of field firing or artillery practice, or

(b) without due authority enters or remains in any camp, or

(c) without due authority enters or remains in any area declared to be a danger zone at a time when entry thereto is prohibited, or

(d) without due authority interferes with any flag or mark or target or any apparatus used for the purposes of the practice,

he shall be punishable with fine which may extend to ten rupees

CHAPTER III

GENERAL

Power to make rules

13 The Provincial Government may, by notification in the local official Gazette, make rules—

(a) prescribing the manner in which the notices required by sub-section (2) of section 2 and sub-section (3) of section 9 shall be published in the areas concerned,

(b) regulate the use under this Act of land for manœuvres or field firing and artillery practice in such manner as to secure the public against the danger and to enable the manœuvres or practice to be carried out without interference and with the minimum inconvenience to the inhabitants of the areas affected,

(c) regulate the procedure of the Revenue Officers and commissions referred to in section 6 in such manner as to secure due publicity regarding the method of making claims for compensation and preferring appeals from original awards of compensation the expeditious settlement of claims and of appeals and the payment of compensation so far as possible direct to the claimants and

(d) define the principles to be followed by the Revenue Officers and commission referred to in section 6 in assessing the amount of compensation to be awarded

THE MATCHES (EXCISE DUTY) ACT. (XVI OF 1934)

CONTENTS-

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SECTIONS

- 1 Short title and extent
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- 3 Imposition of duty on matches
- 4 Rates of duty
- 5 Recovery of duty with penalty
- 6 Issue of matches from manufactory
- 7 Power of Central Government to prohibit import of matches
- 8 Power of Central Government to direct use of banderols
- 9 Prohibition of manufacture of matches and manufacture and import of splints and veneers
- 10 Penalty for issue of matches from

- manufactory in contravention of section 6
- 11 Penalty for import of matches in contravention of Act
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SECTIONS

- 17 Application of the provisions of Act VIII of 1878 to the duty on matches
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SECTIONS

- 19 Power of Central Government to provide for rebate of duty
 20 *Repealed*
 21 *Repeal*

THE MATCHES EXCISE DUTY ACT, 1934

ACT NO XVI OF 1934

(Received the assent of the Governor General on the 1st May, 1934)

An Act to provide for the imposition and collection of an excise duty on matches

[WHEREAS it is expedient to impose an excise duty on matches, to provide for the collection thereof and to alter the duty of customs leviable on matches under the Indian Tariff Act, 1894,* It is hereby enacted as follows —]†

Notes — The purpose of this Bill is to impose an excise duty on matches made in hands of the Bill has been later stage if

Short title and extent 1 (1) This Act may be called the Matches (Excise Duty) Act, 1934

[(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas]‡

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—
 (a) 'manufactory' means any premises wherein matches are manufactured

(b) "match" includes a firework in the form of a match and, where a matchstick contains more heads than one capable of being ignited by striking each such head shall be deemed to be a match,

(c) owners includes any person expressly or impliedly authorised by an owner of a manufactory to be his agent in respect of the manufactory

(d) "splints" means undipped splints such as are ordinarily used for making matches and

(e) veneers means veneers such as are ordinarily used for making match boxes

3 A duty of excise at the rates specified in section 4 shall be levied on all matches manufactured in any manufactory in [British India]‡ and issued out of such manufactory on or after the 1st day of April, 1934, and shall be payable by the owner of the manufactory

Rates of duty

4 The duty payable under section 3 shall be levied at the following rates namely —

(a) on matches in boxes or booklets containing on an average not more than eighty—

* VIII of 1894

† The words within brackets have been omitted in Burma by G. B. Order of 1937

‡ In Burma for the words British India read British Burma, vide G. B. Order of 1927

(i) if the average number is forty or less at the rate of one rupee per gross of boxes or booklets

(ii) if the average number is more than forty, but not more than sixty, at the rate of one rupee and eight annas per gross of boxes or booklets and

(iii) if the average number is more than sixty, at the rate of two rupees per gross of boxes or booklets and

(b) on all other matches at such rate as the [Central Government]* may prescribe

5 (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof recover any sum not exceeding four times the amount of duty unpaid which such authority may in its discretion think it reasonable to require

(2) An arrear of duty or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of land revenue and shall be recoverable in addition to and not in substitution for any other penalty incurred under this Act

6 No person shall issue any matches out of a manufactory except in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made in accordance with the general or special orders of the [Central Government]*

7 The [Central Government]* may by notification in the [official Gazette]† prohibit absolutely or with such exceptions as it thinks fit the bringing of matches into [British India]‡ from the territory of any specified [Prince or Chief in India] †

8 (1) The [Central Government]* may by notification in the [official Gazette] † direct that after a date to be specified in the notification no matches manufactured after the date of the issue of the notification shall be issued from a manufactory in [British India]‡ except in packets boxes or booklets bearing a banderol or stamp of such nature and affixed in such manner as may be prescribed by rules made under this Act

(2) The [Central Government]* may by a like notification direct that after a date to be specified in the notification no matches shall be sold or offered or kept for sale in [British India]‡ except in packets boxes or booklets bearing such a banderol or stamp so affixed

(3) The [Central Government]* may exempt from the operation of any notification made under sub section (1) matches intended for export from [India] †

(4) The [Central Government]* may exempt from the operation

* In 1937
† In 1937
‡ In 1937
and for

of any notification made under sub-section (2) matches of a particular kind or packed in a particular manner

Prohibition of manufacture of matches and manufacture and import of splints and veneers

9 From such date as may be fixed by the [Central Government]* by notification in the [official Gazette]† in this behalf—

(a) no person shall manufacture matches or splints or veneers in [British India]‡ except under and in accordance with a licence to manufacture issued under this Act,

(b) no person shall import splints or veneers into [British India]‡ except under and in accordance with a licence to import, and

(c) no person shall supply splints or veneers to any person who does not possess a licence to manufacture matches issued under this Act nor otherwise than in such manner as may be prescribed by rules made under this Act

10 Whoever contravenes the provisions of section 6 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both

Penalty for issue of matches from manufactory in contravention of section 6

11 (1) Whoever, in contravention of any notification made under section 7 imports, or attempts to import, matches into [British India]‡ shall be punishable with imprisonment which may extend to six months or with fine which may extend to four times the amount of the duty which would be payable on the matches if they were liable to duty in [British India]‡ or to one thousand rupees, whichever is greater or with both imprisonment and fine

(2) Whoever abets an offence punishable under sub-section (1) shall, whether such offence is or is not committed in consequence of such abetment and notwithstanding anything contained in section 116 of the Indian Penal Code,§ be punishable with the punishment provided for the offence

12 (1) Whoever, in contravention of any direction made under sub-section (1) of section 8, issues any matches from any manufactory shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or to one rupee for every packet, box or booklet of matches in respect of which an offence has been committed whichever is greater or with both imprisonment and fine

(2) Whoever in contravention of any direction made under sub-section (2) of section 8 sells or offers or keeps for sale any matches shall be punishable with fine which may extend to one thousand rupees or to one rupee for every packet box or booklet of matches in respect of which an offence has been committed, whichever is greater

* In British India the words within brackets have been substituted by G I Order of 1937
 † G B Order of 1937
 ‡ G I Order of 1937
 § G B Order of 1937
 vide G B Order of 1937
 1937
 § LV of 1860

13 Whoever, in contravention of the provisions of section 9 manufactures matches or splints or veneers or imports splints or veneers into [British India]* or supplies splints or veneers to any person shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both

14 Whoever evades, or attempts to evade, the payment of any duty payable by him under this Act, or fails to supply, any information which he is required under this Act or the rules to supply, or knowingly supplies false information shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both

15 Any Court trying an offence under this Act may order that any matches, splints or veneers together with the boxes packing or wrappings thereof in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Majesty

16 The law for the time being in force relating to Sea Customs and to goods the importation of which is prohibited by section 18 of the Sea Customs Act, 1878,† shall apply in respect of matches, splints or veneers, the importation of which is prohibited by or under this Act, and the officers of Customs and the officers empowered under the Sea Customs Act 1878,† to perform the duties imposed by that Act on a Customs-Collector and other officers of Customs shall have the same powers in respect of such matches splints or veneers as they have for the time being in respect of goods the importation of which is prohibited by section 18 of the Sea Customs Act, 1878

Provided that the penalty for the offence specified in section 167, No 8 of the Sea Customs Act, 1878 † shall where the offence is committed in relation to matches splints or veneers the importation of which is prohibited by or under this Act be a penalty of confiscation only and such penalty of confiscation shall not be inflicted under section 167, No 8, of the Sea Customs Act, 1878 † in any case where the person concerned in the offence is sent for trial under section 11 or section 13 of this Act

17 The [Central Government]‡ may by notification in the [official Gazette]§ declare that any of the provisions of the Sea Customs Act, 1878,† relating to the levy of and exemption from customs duties drawback of duty,

* In Burma for the words British India read British Burma and for the words India read Burma † vide G B Order of 1937

† VIII of 1878

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for the words read the word Governor, vide G B Order of 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as he may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duty on matches imposed by section 3

18. (1) The [Central Government]* may, by notification in the [official Gazette,]† make rules to carry into effect the purposes and objects of this Act

Power of Central Government to make rules

(2) in particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the rate of duty referred to in clause (b) of section 4

(b) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duty shall be payable, and the recovery of arrears,

(c) provide for the distinguishing of matches, splints or veneers which have been manufactured under licence, of splints or veneers which have been imported under licence and of matches on which duty has been paid, or which are exempt from duty under this Act,

(d) regulate the issue of matches out of any manufactory and limit the number of matches which may be contained in a box or booklet,

(e) Impose on the owners of manufactories and on persons engaged in the sale of matches the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified,

(f) Provide for the issuing for licences, the form and the conditions of licences and, the fees to be charged therefor,

(g) regulate the sale of splints and veneers,

(h) provide for the detention of matches for the purpose of exacting the duty, the confiscation, otherwise than under section 15, of matches splints and veneers in respect of which breaches of the Act or rules have been committed, and the disposal of matches, splints and veneers so detained or confiscated,

(i) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of matches, splints or veneers,

(j) authorise and regulate the composition of offences against, or liabilities incurred under the Act and rules including composite payments in lieu of duty, and

(k) prescribe the nature of and the manner of affixing banderols or stamps

(3) In making any rule under this section the [Central Government]* may provide that a breach of the rule shall, where no other penalty is provided by this Act, be punishable with imprisonment for

* In 1937.

† In 1937.

any term not exceeding six months or with fine not exceeding one thousand rupees or with both imprisonment and fine *

19 The [Central Government]† may by notification in the [official Gazette] ‡ make rules to provide for the grant of a rebate of the duty payable under section 3 on matches manufactured in any manufactory whose daily output does not exceed one hundred gross of boxes to the following extent, namely —

(i) where the average number of matches in a box or booklet is forty or less a rebate of ten pies per gross of boxes or booklets,

(ii) where the average number of matches in a box or booklet is more than forty but not more than sixty, a rebate of one anna and three pies per gross of boxes or booklets and

(iii) where the average number of matches in a box or booklet is more than sixty a rebate of one anna and eight pies per gross of boxes or booklets

20 (Repealed by Act 32 of 1934)

21 *Rep by G I Order of 1937 §*

THE MEASURES OF LENGTH ACT, 1889

CONTENTS

PREAMBLE

SECTIONS

- 1 Title extent and commencement
- 2 Standard yard
- 3 Measure for determining length of standard yard
- 4 Standard foot and inch
- 5 Presumption in favour of accuracy of certified measures

SECTIONS

- 6 Inspection of certified measures by the public
- 7 Certified measure to be kept by authorities required by existing enactments to keep measures of length

THE MEASURES OF LENGTH ACT

(ACT II OF 1889)

(Received the Governor General's assent on the 15th February, 1889)

[An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India]

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India It is hereby enacted as follows —]

* Sub section (4) after this, repealed by G I Order of 1937 and G B Order of 1937 have been omitted

†
1937
:
1937
§
force in Burma It runs as follows —

21 The Burma (Excise) Duty on Matches Act 1932, is hereby repealed with effect made liable ending

Title extent and commencement 1 (1) This Act may be called the Measures of Length Act, 1889.

[(2) It extends to the whole of British India.]* and

(3) It shall come into force on such day as the [Central Government]† may appoint in this behalf

Notes —In Act V of 1870 French metro was adopted as unit for measures of length but the Secretary of State for India disallowed that Act Since then no standard measure of length was adopted in British India

2 The imperial standard yard for the United Kingdom shall be the legal standard measure of length in [British India.]‡ and be called the standard yard

Standard yard

Notes —At the time of the passing of the Act the English yard had practically superseded the ever varying measures of the native dynasties throughout India At that time people of India became accustomed to use the English foot and inches —Proceedings in Council

3 A copy, approved by the [Provincial Government]§ of the imperial standard for determining the length of the imperial standard yard for the United Kingdom, shall be kept in such place "within the limits of the [Province]"|| as the [Provincial Government]† may prescribe, and shall be the standard for determining the length of the standard yard

Measure for determining length of standard yard

[Provided that, until action is taken by the Provincial Government under this section, the copy of the imperial standard yard approved by the Central Government before the commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits of the town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each Province]¶

Notes —In case of dispute as regards measurement some standard yard must be forthcoming to settle the dispute For this purpose provision was made in the Act for keeping a copy of the imperial standard for determining the length of the imperial standard yard for the United Kingdom in Calcutta which was then the capital of British India

4 One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch

Standard foot and inch

Notes —A foot is a measure consisting of 12 inches and it is $\frac{1}{3}$ of a yard An inch is $\frac{1}{12}$ of a foot or $\frac{1}{36}$ of a yard

5 Any measure having stamped thereon or affixed thereto a certificate purporting to be made [before the first day of April 1937, under the authority of any Government in British

Presumption in favour of accuracy of certified measures

* In Burma the title preamble and sub section (2) of section 1 have been omitted by G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of or vide G B Order of 1937

vide G B Order of 1937
§ been substituted by G I Order
nor, vide G B Order of 1937
en substituted by G I Order of
a province have been omitted by

* Omitted by G B Order of 1937 in British India In Burma this proviso is substituted for the following proviso by G B Order of 1937 —
'Provided that until such a copy has been approved by the Governor the copy kept in Calcutta under this section as in force in British India shall be the standard'

India or on or after that date under the authority of the Provincial Government]* and stating that the measure is of the length of the standard yard, or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an official Gazette [by order of the Provincial Government],† or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved

Notes—This section authorises the presumption in favour of accuracy of certified measures

6 A public servant having, in pursuance of such a direction, charge of such a measure as is mentioned in the last foregoing section, shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession

Notes—This facility of inspection is given for public convenience

[7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866,‡ by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888 by the Municipal Commissioner in the city of Bombay under section 418 of the City of Bombay Municipal Act, 1888 and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code such certified measures of the standard yard, standard foot, and standard inch as are mentioned in section 5]§

THE MECHANICAL LIGHTERS (EXCISE DUTY) ACT, 1934.

CONTENTS.

PREAMBLE

SECTIONS

- 1 Short title and extent
- 2 Definitions
- 3 Imposition of Duty
- 4 Recovery of duty with penalty
- 5 Issue from manufactory
- 6 Power of Central Government to prohibit import

SECTIONS

- 7 Prohibition of manufacture without licence.
- 8 Penalty for issue from manufactory in contravention of section 5
- 9 Penalty for import in contravention of Act
- 10 Penalty for manufacture without licence

* Substituted in British India by G I Order of 1937 In Burma for these words read the following "under the authority of the Governor or of any Government in British India" vide G B Order of 1937

† Substituted in British India by G I Order of 1937 In Burma for these words read the following "by Order of the Governor," vide G B Order of 1937

‡ Certain words after this repealed by Act 21 of 1931 have been omitted

§ In Burma section 7 has been omitted by G B Order of 1937

SECTION

- 11 Penalty for evasion of duty or failure to supply information
 12 " "
 13 " "
 14 Application of the provisions of Act

SECTION

- VIII of 1878 to the duty on mechanical lighters
 15 Power of Central Government to make rules
 16 Amendment of second schedule Act VIII of 1894

THE MECHANICAL LIGHTERS (EXCISE DUTY) ACT, 1934.

ACT NO XXIII OF 1934

(Received the assent of the Governor General on the 19th August 1934)

An Act to provide for the imposition and collection of an excise duty on mechanical lighters

[WHEREAS it is expedient to impose an excise duty on mechanical lighters, to provide for the collection thereof and to alter the duty of customs leviable on mechanical lighters under the Indian Tariff Act, 1894,* It is hereby enacted as follows —]†

imposed on mechanical lighters and that the custom duty should be correspondingly enhanced — *Statements of Objects and Reasons*

Short title and extent

1 (1) This Act may be called the Mechanical Lighters (Excise Duty) Act, 1934

[(2) It extends to the whole of British India including British Baluchistan and the Santhal Parganas] †

Definitions.

2 In this Act, unless there is anything repugnant in the subject or context —

(a) 'manufactory' means any premises wherein mechanical lighters are manufactured

(b) "mechanical lighter" means any mechanical or chemical contrivance for causing ignition which is portable and which operates by producing a spark or flame whether by itself or when brought into contact with gas and includes a mechanical lighter issued from a manufactory in an incomplete state or requiring for its completion the addition of a flint and

(c) 'owner' includes any person expressly or impliedly authorised by an owner of a manufactory to be his agent in respect of the manufactory

3 A duty of excise at the rate of one rupee and eight annas per lighter shall be levied on every mechanical lighter manufactured in any manufactory in [British India]‡ and issued out of such manufactory after

* VIII of 1891

† In Burma the preamble and sub section (2) of section 1 have been omitted by G B Order of 1937

‡ In Burma for British India read British Burma vide G B Order of 1937

the commencement of this Act, and shall be payable by the owner of the manufactory

4 (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act, it shall be deemed to be an arrear, and the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding three times the amount of duty unpaid which such authority may in its discretion think it reasonable to require

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section, shall be recoverable as an arrear of land revenue and shall be recoverable in addition to and not in substitution for, any other penalty incurred under this Act

5 No person shall issue any mechanical lighter out of a manufactory, except in accordance with the provisions of rules made in that behalf under this Act, or, until such rules are made, in accordance with the general or special orders of the [Central Government] *

6 The [Central Government]* may, by notification in the [official Gazette]† prohibit absolutely, or with such exceptions as it thinks fit the bringing of mechanical lighters into [British India]‡ from the territory of any specified [Prince or Chief in India] ‡

7 From such date as may be fixed by the [Central Government]* by notification in the [official Gazette]† in this behalf, no person shall manufacture mechanical lighters in [British India]‡ except under and in accordance with a licence to manufacture issued under this Act

8 Whoever contravenes the provisions of section 5 shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both

9 (1) Whoever in contravention of any notification made under section 6, imports or attempts to import, mechanical lighters into [British India]‡ shall be punishable with imprisonment which may extend to six months or with fine which may extend to three times the amount of the duty which would be payable on the mechanical lighters if they were liable to duty in [British India]‡ or to one thousand rupees whichever is greater, or with both imprisonment and fine

(2) Whoever abets an offence punishable under sub-section (1) shall, whether such offence is or is not committed in consequence of such abetment, and notwithstanding anything contained in section 116

1937 . of
 † of
 1937 .
 ‡
 for

of the Indian Penal Code,* be punishable with the punishment provided for the offence

10 Whoever, without a licence to manufacture, or in contravention of the terms of such licence manufactures mechanical lighters, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both

11 Whoever evades, or attempts to evade, the payment of any duty payable by him under this Act, or fails to supply any information which he is required under this Act or the rules to supply, or knowingly supplies false information, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both

12 Any Court trying an offence under this Act may order that any mechanical lighters, together with the boxes, packing or wrappings thereof in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Majesty

13 The law for the time being in force relating to Sea Customs and to goods the importation of which is prohibited by section 18 of the Sea Customs Act, 1878† shall apply in respect of mechanical lighters the importation of which is prohibited by notification made under section 6 of this Act, and the officers of Customs and the officers empowered under the Sea Customs Act, 1878,† to perform the duties imposed by that Act, on a Customs Collector and other officers of Customs shall have the same powers in respect of such mechanical lighters as they have for the time being in respect of goods the importation of which is prohibited by section 18 of the Sea Customs Act, 1878†

Provided that the penalty for the offence specified in section 167, No 8 of the Sea Customs Act, 1878,† shall where the offence is committed in relation to mechanical lighters the importation of which is prohibited under section 6 of this Act be a penalty of confiscation only, and such penalty of confiscation shall not be inflicted under section 167 No 8 of the Sea Customs Act 1878† in any case where the person concerned in the offence is sent for trial under section 9 of this Act

14 The [Central] Government‡ may by notification in the [official Gazette]§ declare that any of the provisions of the Sea Customs Act, 1878† relating to the levy of and exemption from customs duties drawback of duty.

* XLV of 1860

† VIII of 1878

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

warehousing, offences and penalties, confiscation and procedure relating to offences and appeals shall, with such modifications and alterations as he may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duty imposed by section 3

Power of Central Government
to make rules

15 (1) The [Central Government]* may, by notification in the [official Gazette]† make rules to carry into effect

the purposes and objects of this Act

(2) In particular, and without prejudice to the generality of the foregoing power such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duty shall be payable and the recovery of arrears ,

(b) provide for the distinguishing of mechanical lighters which have been manufactured under licence, or on which duty has been paid, or which are exempt from duty under this Act ,

(c) regulate the issue of mechanical lighters out of any manufactory ;

(d) impose on the owners of manufactories and on persons engaged in the sale of mechanical lighters the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified ,

(e) provide for the issuing of licences, the form and the conditions of licences, and the fees to be charged therefor ,

(f) provide for the detention of mechanical lighters for the purpose of exacting the duty, the confiscation, otherwise than under section 12 of articles in respect of which breaches of the Act or rules have been committed, and the disposal of articles so detained or confiscated ,

(g) authorise and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of mechanical lighters , and

(h) authorise and regulate the composition of offences against, or liabilities incurred under, the Act and rules, including composite payments in lieu of duty

(3) In making any rule under this section the [Central Government]* may provide that a breach of the rule shall, where no other penalty is provided by the Act, be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both imprisonment and fine ‡

Amendment of Second Schedule, Act VIII of 1894

16 *Rep by Act 12 of 1935*

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Government".

THE INDIAN MEDICAL DEGREES ACT, 1916.

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PREAMBLE

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- 1 Short title
- 2 Definition
- 3 Rights to confer degrees, etc
Indian Medical Degrees
- 4 Prohibition of unauthorised conferment of degrees etc

SECTION

- 5 Contravention of section 4
- 6 Penalty for falsely assuming or using medical titles
- 7 Cognizance of offences
- 8 Jurisdiction of Magistrates

SCHEDULE

THE INDIAN MEDICAL DEGREES ACT 1916

ACT NO VII OF 1916

(Received the Governor-General's Assent on the 16th March 1916)

An Act to regulate the grant of titles implying qualifications in western medical science and the assumption and use by unqualified persons of such titles

WHEREAS it is expedient to regulate the grant of titles implying qualifications in western medical science and the assumption and use by unqualified persons of such titles It is hereby enacted as follows —

Short title

[1 This Act may be called the Indian Medical Degrees Act, 1916]*

Notes — Acts of the Local Councils provide in many of the lower provinces of British India for the registration of persons duly qualified to practise western medicine or surgery and where such Acts have been passed Medical Councils have been constituted with specific powers and duties It is now considered necessary to supplement this provincial

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2 In this Act western medical science means the western methods of Allopathic medicine, Obstetrics and Surgery but does not include the Homœopathic or Ayurvedic or Unani system of medicine

3 The right of conferring, granting or issuing in [British India]† degrees diplomas licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise Western

* In Burma section 1, has been substituted by the following section 1, namely —

“1 This Act may be called the Medical Degrees Act, vide G. B. Order of 1937

† In Burma for ‘British India’ read ‘British Burma,’ vide G. B. Order of 1937

medical science, shall be exercisable only by the [authorities specified in the Schedule]* and by such other authority as the [Provincial Government]† may, by notification in the [official Gazette]‡ and subject to such conditions and restrictions as he thinks fit to impose, authorise in this behalf

4 Save as provided by section 3, no person in [British India]§ shall confer grant or issue, or hold himself out as entitled to confer, grant, or issue any degree, diploma, licence, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise western medical science

Prohibition of unauthorised conferment of degrees etc

Notes —Unauthorised conferment of degrees is prohibited by this section

5 Whoever contravenes the provision of section 4 shall be punishable with fine which may extend to one thousand rupees, and if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention shall be punishable with fine which may extend to five hundred rupees

Notes —Conferment of unauthorised degree is made penal by this section. Accused leading people to believe that his College is Allopathy College and issuing Allopathic diploma is guilty under s 5 A I R 1933 Cal 456

6 Whoever voluntarily and falsely assumes or uses any title or description or any addition to his name [implying that he holds a degree, diploma, licence or certificate conferred, granted or issued by any authority referred to in section 3, or recognised by the General Council of Medical Education of the United Kingdom, or that he is qualified to practise western medical science]|| shall be punishable with fine which may extend to two hundred and fifty rupees or, if he subsequently commits and is convicted of an offence punishable under this section, with fine which may extend to five hundred rupees

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which prior to the commencement of this Act he used in virtue of any degree, diploma, licence or certificate conferred upon or granted or issued to him

Notes —False assumption of medical degree is made penal

* In Burma for the words within brackets read the words 'University of Rangoon' vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' vide G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Gazette' vide G B Order of 1937

§ In Burma for the words 'British India' read 'British Burma' vide G B Order of 1937

|| In Burma for the words within brackets read the following —

licence or (b) that he or issued by any of Medical Education in British India to confer, or other documents qualified to

8 No Court inferior to that of [a Presidency Magistrate or]† a
Jurisdiction of Magistrates Magistrate of the first class shall try any
offence punishable under this Act

al Legislaturo] §

6 Application of certain of the fore-
going provisions of this Act to
importation of pieces of metal for
use as money

7 Repealed

8 Prohibition of receipt by local autho-
rities and railways as money of
metal which is not coin

9 Repealed

* The Act has been declared in force in Upper Burma (except the Shan State) by Act XIII of 1898 s. 4

(2) It extends to the whole of British India . *

2 In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in [British India]† such piece having

Definition

been made in contravention of this Act, or brought into [British India]† by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.

3. No piece of copper or bronze, or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made [except by the authority of the "Central Government"†]§

Prohibition of making by private persons of pieces of metal to be used as money

Penalty for unlawful making, issue or possession of such pieces

4 (1) In either of the following cases, namely —

(a) if any person makes, in contravention of the last foregoing section, or issues, or attempts to issue, any such piece as is mentioned in that section,

(b) if after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control, any such piece as is mentioned, in the last foregoing section, with intent to issue the piece,

the person shall be punished,—

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both or

(ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine or with both

(2) If any person is convicted of an offence under sub-section (1), he shall in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces which may have been found in his possession, custody, or control

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so issued shall lie on the accused person

Cognizance of offences under the last foregoing section

5 (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section, shall be, a cognizable offence

(2) Notwithstanding anything in the Code of Criminal Procedure,

* Cf. s. 1 of the Coinage Act, 1870. † Cf. s. 1 of the Coinage Act, 1870. § Cf. s. 1 of the Coinage Act, 1870.

1882, no other offence punishable under section 4 shall be a cognizable offence or [beyond the limit of a Presidency town]* be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate

6 If at any time the [Central Government]† sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into [British India]‡ of any such pieces of metal as are mentioned in section 3, he may, by the notification, direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in [British India]‡ instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section in relation to the offence of making such pieces, shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act

7. [Repealed by Act V of 1893]

Prohibition of receipt by local authorities and Railways as money of metal which is not coin

8 (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority

(2) If any person, on behalf of a railway administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

Notes.—Receipt of metal which is not coin is made penal by this section

Amendment of section 25 of the Indian Penal Code

9 [Repealed by Act I of 1938] §

* In Burma the words 'beyond the limits of Presidency town' has been omitted by G. P. Order of 1937

† In British India the words within brackets have been sub-tituted by G. I. Order of 1937. In Burma for these words read the word 'Governor' vide G. B. Order of 1937

‡ shall be substituted namely

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact
Explanation 2.—Where a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby it shall be presumed until the contrary is proved that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised

THE INDIAN MERCHANDISE MARKS ACT, 1889

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3 [Substitution of new sections for sections 478 to 483 of the Indian Penal Code—Repealed]

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SECTION

11 [Addition of a section after section 19, Act I III of 1878—Repealed]

Stamping of length of piece goods manufactured in British India

12 Stamping of length of piece goods manufactured in British India.

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14 Costs of defence or prosecution

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22 Punishment of abetment in India of Acts done out of India

THE INDIAN MERCHANDISE MARKS ACT

(ACT NO IV OF 1889.)*

(Received the assent of the Governor General on the 1st March 1889)

An Act to amend the law relating to fraudulent marks on merchandise

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise It is hereby enacted as follows —

Title extent and commencement [1 (1) This Act may be called 'The Indian Merchandise Marks Act 1889'"]

(2) It extends to the whole of British India †

(3) It shall come into force on the first day of April 1889 ‡

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Definitions

2 In this Act, unless there is something repugnant in the subject or context —

* The Act has been declared in force in Upper Burma (except the Shan States) by Act XIII of 1898 s 4

† In s 1 certain words which were repealed by Act IX of 1891, have here been omitted

‡ In Burma section 1 has been substituted by G B Order of 1937 by the following section 1 —

1 This Act may be called the Burma Merchandise Marks Act

Cr C H Vol I—123

(1) "trade-mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act ;

(2) "trade description" means any description, statement, or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge, or weight of any goods, or

(b) as to the place or country in which, or the time at which, any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege, or copyright ,

and the use of any numeral, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act

(3) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act ,

(4) "goods" means anything which is the subject of trade or manufacture , and

(5) "name" includes any abbreviation of a name

Trade description—Where a design or pattern covers the whole body of goods and is part and parcel of goods themselves, it is not a trade description within this section
25 Ind Cas 998

Patent—There must be existing patents or copyright A. I R 1933 Nag 344

Clause 3—*vide* 26 B 289=3 Bom L R 883

Amendment of the Indian Penal Code

Substitution of new sections for sections 478 to 489 of the Indian Penal Code

3 [Repealed by Act I of 1938]*

Trade descriptions

- 4** (1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words, or marks, or arrangement or combination thereof, whether including a trade mark or not as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture

Provisions supplemental to the definition of false trade description

* Section 3 has been repealed in British India by Act I of 1938 This section is in
relates to Trade

or merchandise they really are, and to goods having such numerals, words, or marks, or arrangement or combination, applied thereto

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were trade description, and for the purpose of this enactment the expression "false name or initial" means, as applied to any goods, any name or initials—

(a) not being a trade mark, or part of a trade mark, and

(b) being identical with or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorised the use of such name or initials

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet, or inches than there are contained therein, standard yards, standard feet, or standard inches, is a false trade description

Notes—Where a design or pattern covers the whole body of goods and is part and parcel of the goods themselves it is not a trade description within this section 25 Ind Cas 998

Application of trade descriptions

5 (1) A person shall be deemed to apply a trade description to goods who—

(a) applies it to the goods themselves, or

(b) applies it to any covering, label, reel, or other things in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(c) places encloses or annexes any goods which are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering label or reel, or other thing to which a trade description has been applied or

(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description

(2) A trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into or annexed or affixed to the goods or any covering, label reel, or other things

(3) The expression 'covering' includes any stopper, cask bottle, vessel box cover capsule case, frame, or wrapper and the expression "label" includes any band or ticket

6 If a person applies a false trade description to goods he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term, which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year or with fine or with both

Penalty for applying a false trade description

Notes—A body corporate can be lawfully prosecuted and on conviction punished under section 462 or section 466 of the Indian Penal Code The word "person" in sections 6 and 7 includes the company and it 23 Ind Cas 689 The word

imitation is no offence in the absence of infringement A I R 1933 Nag 344 Using handbill, intended to mislead is an offence under this section 29 S L R 179=156 Ind Cas 321=36 Cr L J 909=A I R 1935 Sind 107

Penalty for selling goods to which a false trade description is applied

7 If a person sells, or exposes, or has in possession for sale or any purposes of trade or manufacture, any goods or things to which a false trade description is applied he shall, unless he proves—

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade description and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

he be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees and in case of a second or subsequent conviction, with imprisonment which may extend to one year, or with fine, or with both

Unintentional Contravention of the law relating to Marks and Descriptions

8 Where a person is accused under section 482 of the Indian

Unintentional contravention of the law relating to marks and descriptions

Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property, or receptacle in the manner mentioned in

section 480 or section 481 of that code, as the case may be, or under section 6 of this Act, of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate, or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves —

(a) that in the ordinary course of business he is employed, on behalf of other persons to apply trade marks or property marks, or trade descriptions, or, as the case may be to make dies, plates or other instruments for making, or being used in making trade marks or property marks and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(b) that he took reasonable precautions against committing the offence charged, and

(c) that he had, at the time of commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied he shall be acquitted

Forfeiture of goods

9 (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark or under section 486 of that Code of

Forfeiture of goods

selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto or under section 487 or section 488 of that Code of making, or making use of a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling or exposing, or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, and appeal shall lie against the forfeiture also

(3) When a forfeiture is directed on an acquittal, and the goods or things to which the direction relates are of value exceeding fifty rupees an appeal against the forfeiture may be preferred within thirty days from the date of the direction to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture

Amendment of the Sea Customs Act, 1878

[10 Amendment of section 18 Act VIII of 1878—*Repealed by Act I of 1938*]*

* In Burma sect on 10 is in force which sect on runs as follows —

10 (1) For clause (d) of sect on 18 of the Sea Customs Act 1878 the following shall be substituted namely —

(d) Goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code or a false trade description within the meaning of the Indian Merchandise Marks Act 1889

(e) Goods made or produced beyond the limits of the United Kingdom and British Burma and having applied thereto any name or trade mark being or purporting to be the name or trade mark of any person who is a manufacturer dealer or trader in the

used by a
the limits

in letters as large and conspicuous as any letter in the name or trade mark and the same language and character as the name of trade mark

() To section 18 of the Sea Customs Act 1878 as amended by sub section (1) the

length
cording

been manufactured
ere in British

[11 Addition of a section after section 19, Act VII of 1878—
Repealed by Act I of 1938]*

Stamping of length of piece goods manufactured in [British India]†

12 (1) Piece goods such as are ordinarily sold by length or by the
 Stamping of length of piece goods manufactured in British India piece which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881 shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards or in standard yards and a fraction of such a yard according to the real length of the piece

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub section (1), every such piece and everything used for the packing or removal thereof shall be forfeited to Her Majesty and such person shall be punished with fine which may extend to one thousand rupees

Notes—This provision has been made to prevent fraud on customers

Supplemental Provisions

13 In the case of goods brought into [British India]† by sea
 Evidence of origin of goods imported by sea evidence of the port of shipment shall in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878 as amended by this Act be *prima facie* evidence of the place or country in which the goods were made or produced

Notes—This section corresponds to Merchandise Marks Act 1887 (50 & 51 Vict c 28) s 10 (2)

* In Burma section 11 is in force which section runs as follows—

11 The following shall be added after section 19 of the Sea Customs Act 1878 namely—

19A (1) Before detaining any such goods as are or may be specified in or under
 with a view
 other officer
 his section
 ed with and
 uch as are

(2) The Governor may make regulations either general or special respecting the
 detention and confiscation
 tions if any to be fulfilled
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 evidence

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(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta Port St George Bombay and Burma Gazettes

† In Burma for 'British India' read 'British Burma' vide G. B. Order of 1937

14 (1) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code as amended by this Act, which relate to trade, property, and other marks, the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine

Notes—The appellate Court can also award costs, vide 24 Ind Cas 894

15, No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens

Notes—Any prosecution not filed within three years from the date of the first offence will be barred by this section 35 Ind Cas 671 but see A I R 1931 Cr 278 The recourse to the Criminal Courts is only provided as speedy remedy to traders who are diligent 22 M 483 The owner of the trade mark cannot stand by for several years bring a criminal case in infringement 36 Ind Cas Cr L J 246, A I R 1580 'Offence' does not mean only first offence but repetition of it A I R 1932 Sind 94 Prosecution started within three years is within time A I R 1931 Mad 272 The language of this section is perfectly plain and there is nothing in the rest of the Act to control its natural meaning The starting point of limitation in all cases under this section is the date of the offence charged A I R 1937 Bom 1 (F B)=A I R 1937 Bom 183=38 Cr L J 156=38 Bom L R 1164

16 (1) The [Central Government]* may, by notification [in the official Gazette]† issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub section (1) may provide, among other matters for the limits of variation, as regards number, quantity, measure, gauge, or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods

17 On the sale or in the contract for the sale of any goods to which a trade mark, or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer

18 (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him

Savings

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in [British India]* who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

19† For the purpose of section 12 of this Act, and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the [Central Government]‡ may by notification in the [official Gazette]§ declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece'

20† (1) The [Central Government]‡ may make rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge, or weight, for the number of samples to be selected and tested and for the selection of the samples

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge, or weight, of the goods, shall, by order in writing, determine the number of samples to be selected and tested, and the manner in which the samples are to be selected

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge, or weight, as the case may be, of the goods

(4) If a person, having any claim to or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1), or of an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his written application, and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such

* In Burma the words "British India" have been substituted by "British Burma," by G. B. Order of 1937

† Ss 19, 20, 21 and 22 have been added by Act IX of 1891 and s 19 as originally enacted has been omitted having been repealed by Act IX of 1891 See ss 2 and 4 of Act IX of 1891

‡ I. B. Order of 1937
§ I. B. Order of 1937

extent as may be permitted by rules to be made by the Governor-General in Council in this behalf, or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge, or weight, as the case may be, of the goods

(6) Rules under the section shall be made after previous publication

21 * An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act

22 * If any person, being within [British India][†] abets the commission without [British India][†] or any act which if committed in [British India][†] would under this Act or under any section of that part of Chapter XVIII, of the Indian Penal Code which relates to trade, property, and other marks, be an offence, he may be tried, for such abetment in any place in [British India][†] in which he may be found and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted

THE INDIAN MINES ACT (IV OF 1923)

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*Ss 19, 20 21 and 22 have been added by Act IX of 1891, and s 19, as originally enacted has been omitted having been repealed by Act IX of 1891 See ss 2 and 4 of Act IX of 1891

[†] In Burma for 'British India' read 'British Burma,' vide G B Order of 1937

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SCHEDULE.

THE INDIAN MINES ACT, 1923

(ACT NO. IV OF 1923)

PASSED BY THE INDIAN LEGISLATURE

(Received the assent of the Governor-General on the 23rd February 1923)

An Act to amend and consolidate the law relating to the regulation and inspection of mines

WHEREAS it is expedient to amend and consolidate the law relating to the regulation and inspection of mines, It is hereby enacted as follows —

CHAPTER I

PRELIMINARY

Short title extent and commencement

[1 (1) This Act may be called the Indian Mines Act, 1923

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

(3) It shall come into force on the first day of July 1924]*

* In Burma the following section 1 has been substituted by G. B. Order of 1937
 1 This Act may be called the Mines Act

2. [Saving of Reg XII of 1887—*Repealed by G I Order of 1937.*]*

Definitions

3 In this Act unless there is anything repugnant in the subject or context,—

(a) "agent," when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act,

(b) "Chief Inspector" means the Chief Inspector of Mines appointed under this Act,

[(c) "child" means a person, who has not completed his fifteenth year ;]†

[(cc) "day" means a period of twenty-four hours beginning at midnight ;]†

(ccc) "District Magistrate" means in a Presidency-town, the person appointed by the [Central Government]‡ to perform the duties of a District Magistrate under this Act in that town"§

(d) a person is said to be "employed" in a mine who works under appointment by or with the knowledge of the manager whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in, or about the mine, or in any other kind of work whatsoever incidental to, or connected with, mining operations,

(e) "Inspector" means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform

(f) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals

(g) "owner," when used in relation to a mine, means any person, who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability,

(h) "prescribed" means prescribed by regulations, rules or bye-laws,

ions of the Upper Burma

§ Inserted by Act 21 of 1931 but this clause has been omitted in Burma, vide Order of 1937

(i) "qualified medical practitioner" means any person registered under the Medical Act, 1858,* or any Act amending the same or under† any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners [and includes, in any area where no such last-mentioned Act is in force, any person declared by the "Central Government,"‡ by notification in the "official Gazette"§ to be a qualified medical practitioner for the purposes of this Act.]†

(j) "regulations," "rules" and "bye-laws," means respectively regulations, rules and bye-laws made under this Act,

(j1) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' §

(k) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days, and

(l) "week means the period between midnight on Saturday night and midnight on the succeeding Saturday night

Notes — Mine includes works which are incidental to mining operations. A I R 1934 Cal 387=61 C 445=38 C W N 418=148 Ind Cas 739=35 Cr L J 742=59 C L J 122

CHAPTER II

INSPECTORS

4 (1) The [Central

Chief Inspector and Inspectors

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Inspectors of Mines subordinate to the Chief Inspector

(2) No person shall be appointed to be Chief Inspector or an Inspector, or, having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in [India] **

(3) The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the [Central Government] ||

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32

* 21 & 22 Vict c 90

† In Burma after the words 'or under' insert the words 'the Burma Medical Act or' and omit the words from 'and includes' to the end of the clause vide G B Order of 1937

, I Order
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(4) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code

5 (1) The Chief Inspector may, by order* in writing, prohibit or restrict the exercise by any Inspector
 Functions of Inspectors named, or any class of Inspectors specified, in the order of any power conferred on Inspectors by this Act, and shall subject as aforesaid, declare the local area or areas within which, or the group or class of mines with respect to which, Inspectors shall exercise their respective powers

(2) The Inspector shall give information to owners, agents and managers of mines, situate within the local area or areas or belonging to the group or class of mines, in respect of which he exercises powers under sub section (1) as to all regulations and rules which concern them respectively and as to the places where copies of such regulations and rules may be obtained

6 The Chief Inspector and any
 Powers of Inspectors of Mines Inspector may—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder are observed in the case of any mine ,

(b) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine ,

(c) examine into, and make inquiry respecting the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to safety of the persons employed in the mine

7 Any person in the service of the [Crown]† duly authorised by a
 Powers of special officer to special order in writing of the Chief
 enter measure etc Inspector or of an Inspector in this behalf may, for the purpose of surveying, levelling or measuring in any mine, after giving not less than three days notice to the manager of such mine, enter the mine and may survey level or measure the mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine

8 Every owner agent and manager of a mine shall afford the
 Facilities to be afforded to Chief Inspector and every Inspector and
 Inspectors every person authorised under section 7 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this act

9 (1) All copies of and extracts from, registers or other records
 Secrecy of information obtained appertaining to any mine, and all other information acquired by the Chief Inspector

* XLV of 1860

† In British India the word within brackets has been substituted by G I, Order of 1937 In Burma for the word within brackets read the word Government, vide G I Order of 1937.

or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential,

[and shall not be disclosed to any person other than a Magistrate or an official superior or the owner, agent or manager of the mine concerned, unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the safety of any persons]*

(2) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses [contrary to the provisions of sub-section (1)]† any such information as aforesaid without the consent of the [Central Government]‡ he shall be guilty of a breach of official trust and shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both"§

(3) No Court shall proceed to the trial of any offence under this section [except with the previous sanction of the Central Government] ||

CHAPTER III

MINING BOARDS AND COMMITTEES

10 (1) The [Central Government]‡ may constitute [for any part of Mining Boards British India]¶ or for any group or class of mines¶ a Mining Board consisting of—

(a) a person in the service of Government, not being the Chief Inspector or an Inspector, nominated by the [Central Government]‡ to act as chairman,

(b) the Chief Inspector or Inspector,

[(c) a person not being the Chief Inspector or an Inspector, nominated by the "Central Government" ‡]**

(d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed

[(e) two persons to represent the interest of miners, who shall be nominated in accordance with the following provisions —

(i) if there are one or more registered trade unions having in the aggregate as members not less than one-quarter of the miners, the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed,

(ii) if sub-clause (i) is not applicable and there are one or more

* The words within brackets have been inserted in British India by Act 29 of 1937

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registered trade unions having in the aggregate as members no less than 1 000 miners one of the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed and the other by the 'Central Government' *

(iii) if neither sub-clause (i) nor sub-clause (ii) is applicable, the said persons shall be nominated by the "Central Government" *

Explanation—In this clause 'miner' means a person employed, otherwise than in a position of supervision or management in any of the mines for which the Mining Board is constituted] †

(2) The chairman shall appoint a person to act as secretary to the Board

(3) The [Central Government]* may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member

11 (1) Where under this Act any question relating to a mine
Committees is referred to a Committee, the Committee shall consist of—

(a) a chairman nominated by the [Central Government]* or by such officer or authority as the [Central Government]* may authorise in this behalf,

(b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee and

(c) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned and the other shall be nominated by the [Central Government]* to represent the interests of the persons employed in the mine

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee appointed under this section

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (c) of sub-section (1) the Committee may notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it

(4) Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner agent or manager of the mine concerned may place before it and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the [Central Government] *

(5) On receiving such report the [Central Government]* shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the [Central Government]* may proceed to review such decision and to pass such orders in the matter as it may think fit If an objection is lodged by the Chief Inspector notice of the same shall forthwith be given to the owner agent or manager of the mine

* In British India the words within brackets or quotations have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† Substituted by Act V of 1935

or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential,

[and shall not be disclosed to any person other than a Magistrate or an official superior or the owner, agent or manager of the mine concerned, unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the safety of any persons]*

(2) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses [contrary to the provisions of sub-section (1)]† any such information as aforesaid without the consent of the [Central Government]‡ he shall be guilty of a breach of official trust and shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both' §

(3) No Court shall proceed to the trial of any offence under this section [except with the previous sanction of the Central Government] ||

CHAPTER III

MINING BOARDS AND COMMITTEES

10 (1) The [Central Government]‡ may constitute [for any part of British India]¶ or for any group or class of mines¹ a Mining Board consisting of—

(a) a person in the service of Government, not being the Chief Inspector or an Inspector, nominated by the [Central Government]‡ to act as chairman,

(b) the Chief Inspector or Inspector,

[(c) a person not being the Chief Inspector or an Inspector, nominated by the "Central Government" ‡]**

(d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed

[(e) two persons to represent the interest of miners, who shall be nominated in accordance with the following provisions —

(i) if there are one or more registered trade unions having in the aggregate as members not less than one-quarter of the miners, the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed,

(ii) if sub-clause (i) is not applicable and there are one or more

* The words within brackets have been inserted in British India by Act 29 of 1937

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§ Substituted by Act 37 of 1925

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registered trade unions having in the aggregate as members no less than 1 000 miners one of the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed and the other by the Central Government *

(iii) if neither sub-clause (i) nor sub-clause (ii) is applicable, the said persons shall be nominated by the "Central Government" *

Explanation—In this clause 'miner' means a person employed, otherwise than in a position of supervision or management in any of the mines for which the Mining Board is constituted] †

(2) The chairman shall appoint a person to act as secretary to the Board

(3) The [Central Government]* may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member

11 (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

Committees

(a) a chairman nominated by the [Central Government]* or by such officer or authority as the [Central Government]* may authorise in this behalf,

(b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee and

(c) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned and the other shall be nominated by the [Central Government]* to represent the interests of the persons employed in the mine

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a Committee appointed under this section

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (c) of sub-section (1) the Committee may notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it

(4) Committee shall hear and record such information as the Chief Inspector or the Inspector or the owner agent or manager of the mine concerned may place before it and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the [Central Government] *

(5) On receiving such report the [Central Government]* shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the [Central Government]* may proceed to review such decision and to pass such orders in the matter as it may think fit If an objection is lodged by the Chief Inspector notice of the same shall forthwith be given to the owner agent or manager of the mine

* In British India the words within brackets or quotations have been substituted by G. I. Order of 1937 In Burma for these words read the word Governor vide G. I. Order of 1937

† Substituted by Act V of 1935

(6) The [Central Government]* may give directions as to the remuneration, if any, to be paid to the members of the Committee or any of them and as to the payment of the expenses of the inquiry including such remuneration

12 (1) Any Mining Board constituted under section 10 and any Committee constituted under section 11 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it

(2) Every Mining Board constituted under section 10 and every Committee appointed under section 11 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908,† for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code,‡—

13 The [Central Government]* may direct that the expenses of any inquiry conducted by Mining Board constituted under section 10 or by a Committee appointed under section 11 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any moveable property within the limits of the Magistrate's jurisdiction belonging to such "owner or agent" §

CHAPTER IV

MINING OPERATIONS AND MANAGEMENT OF MINES.

14 The owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or, in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the District in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed

15 (1) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor," vide G. B. Order of 1937.

† V. of 1908

‡ XLV of 1900

§ Substituted by Act 37 of 1925

(2) If any mine is worked without there being a manager for the mine as required by sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of this section

Notes—The term mine as being worked is not confined to actual mining operations that is to say such operations as relate to the actual raising of coal 61 C 445=39 C W N 418=148 Ind Cas 739=35 Cr L J 742=59 C L J 122—A I R 1934 Cal 387

16 (1) The owner agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this act and of the regulations, rules and bye-laws and of any orders made thereunder

(2) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention

Provided that the owner or agent shall not be so deemed if he proves—

(a) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine, and

(b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties and

(c) that the offence was committed without his knowledge, consent or connivance

(3) Save as hereinbefore provided it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act

CHAPTER V

PROVISIONS AS TO HEALTH AND SAFETY

17 There shall be provided and maintained for every mine
 Conservancy latrine and urinal accommodation of such kind and on such scale and such supply of water fit for drinking, as may be prescribed

18 At every mine in respect of which the [Central Government]* may by notification in the [official Gazette]† declare this section to apply, such supply of ambulances or stretchers, and of splints bandages and other medical requirements as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order

19 (1) If, in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief Inspector or the Inspector that any mine, or any part thereof or any matter,

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous

thing or practice in or connected with the mine or with the control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice

"(1A) Without prejudice to the generality of the provisions contained in sub-section (1), the Chief Inspector or the Inspector may, in any area to which the [Central Government]* may, by notification in the [official Gazette]† declare that this sub-section applies, by order in writing addressed to the owner, agent, or manager—

(a) prohibit the extraction or reduction of pillars in any part of the mine if, in his opinion, such operation is likely to cause the crashing of pillars or the premature collapse of any part of the workings or otherwise endanger the mine, or if, in his opinion, adequate provision against the outbreak of fire has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by a fire, or

(b) limit to such dimensions as he considers reasonable the galleries that may be driven in the mine.

and the provisions of sub-sections (3), (4) (5) and (6) shall apply to an order made under this sub-section as they apply to an order made under sub-section (2) "‡

(2) If the Chief Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger

(3) Where an order has been made under sub-section (2) by an Inspector, the owner, agent or manager of the mine may, within ten days, after the receipt of the order, appeal against the same to the Chief Inspector who may confirm, modify or cancel the order

(4) The Chief Inspector or the Inspector making a requisition under sub-section (1) or an order under sub-section (2) and the Chief

Inspector making an order (other than an order of cancellation) in appeal under subsection (3), shall forthwith report the same to the [Central Government]* and shall inform the owner, agent or manager of the mine that such report has been so made

(5) If the owner, agent or manager of the mine objects to a requisition made under sub-section (1) or to an order made by the Chief Inspector under sub-section (2), or sub-section (3), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the [Central Government]* which shall refer the same to a Committee

(6) Every requisition made under sub-section (1), or order made under sub-section (2), or sub-section (3), to which objection is made under sub-section (5), shall be complied with pending the receipt at the mine of the decision of the Committee

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (1) pending its decision on the objection

(7) Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898 †

20 (1) When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed

†(2) The [Central Government]* may by notification in the [official Gazette]§, direct that accidents other than those specified in sub section (1) which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding forty eight hours shall be entered in a register in the prescribed form or shall be subject to the provisions of sub-section (1)

(3) A Copy of the entries in the register referred to in the sub-section (2) shall be sent by the owner agent, or manager of the mine, within fourteen days after the 30th day of June and the 31st day of December in each year to the Chief Inspector"

21 (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the [Central Government]* if it is of opinion that a formal inquiry into the causes of, and circumstances attending the accident ought to be held, may appoint a competent person to hold such inquiry and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor 'vide G B Order of 1937

† V of 1898

‡ The words within quotations have been inserted by Act V of 1935

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Gazette,' vide G B Order of 1937.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908* for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code†

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry

(4) The person holding an inquiry under this section shall make a report to the [Central Government]‡ stating the causes of accident and its circumstances and adding any observations which he or any of the assessors may think fit to make

22 The [Central Government]‡ may cause any report submitted by a Committee under section 11* and shall cause every report submitted § by a Court of inquiry under section 21 to be published at such time and such manner as it may think fit

CHAPTER VI

HOURS AND LIMITATION OF EMPLOYMENT

Weekly day of rest

§22A No person shall be allowed to work in a mine on more than six days in any one week

§22B (1) A person employed above ground in a mine shall not be allowed to work for more than fifty-four hours in any week or for more than ten hours in any day

(2) The periods of work of any such person shall be so arranged that, along with his intervals of rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than six hours before he has had an interval for rest of at least one hour

(3) Persons belonging to two or more relays shall not be allowed to do work of the same kind above ground at the same moment

Provided that for the purposes of this sub-section persons shall not be deemed to belong to separate relays by reason only of the fact that they receive their intervals for rest at different times

§22C (1) A person employed below ground in a mine shall not be allowed to work for more than nine hours in any day

(2) Work of the same kind shall not be carried on below ground in any mine for a period spreading over more than nine hours in any day except by a system of relays so arranged that the periods of work for each relay are not spread over more than nine hours

* V of 1908

† XLV of 1860

‡ In British India the words within brackets have been substituted by G O I Order of 1937 In Burma for the words within brackets read the word Governor rule G O I Order of 1937

§ Substituted by Act V of 1935

|| Sections 22A to 22D have been inserted by Act V of 1935

(3) No person employed in a mine shall be allowed to be in any part of the mine below ground except during the periods of work shown in respect of mine in the register kept under sub section (1) of section 28

***22D** Where a work in a relay whose period of work extends over mid night the ending day for him shall be deemed to be the period of twenty four hours beginning at the end of the period of work fixed for the relay and the hours he has worked after mid night shall be counted towards the previous day

†23 No person shall be allowed to work in a mine who has already been working in any other mine within the preceding twelve hours

Special provisions for night relays
Prohibition of employment of certain persons

‡ 23B (1) The manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form stating the time of the commencement and of the end of work at the mine and if it is proposed to work by a system of relays § the time of the commencement and of the end of the work for each relay § The notice shall also state the time of the commencement and of the end of the intervals for rest fixed for persons employed above ground || A copy of each such notice shall be sent to the Chief Inspector if he so requires

(2) In the case of a mine at which mining operations commence after the 14th day of April 1930 the notice referred to in sub section (1) shall be posted not less than seven days before the commencement of work

(3) When it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any relay or in the rest intervals fixed for persons employed above ground an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change ¶

|| (4) No person shall be allowed to work in a mine otherwise than in accordance with the notice required by sub section (1)

24 Nothing in section 22A section 22B section 22C section 23 or sub section (4) of section 23B § shall apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity

25 In case of an emergency involving serious risk to the safety of the mine or of persons employed therein the manager may, subject to the provisions of section 19 permit persons to be

Exemption from provisions regard ng employment

employed in contravention of "section 22A, section 22B, section 22C, section 23, or sub-section (4) of section 23B"* on such work as may be necessary to protect the safety of the mine or of the persons employed therein

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine

26. No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground

Children

126A No person who has not completed his seventeenth year shall be allowed to be present in any part of a mine which is below ground, unless—
Young persons not to be allowed under ground without certificate of fitness

(a) certificate of fitness in the prescribed form and granted to him by a qualified medical practitioner is in the custody of the manager of the mine, and

(b) he carries while at work a token giving a reference to such certificate

27 (1) If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child "or has not completed his seventeenth year"† the question shall in the absence of certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a qualified medical practitioner on a reference under sub-section (1) shall, for the purposes of this Act, be conclusive evidence as to the age of the person to whom it relates

†28 (1) For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing, in respect of each such person,—

Register of employees

(a) the nature of his employment,

(b) the periods of work fixed for him,

(c) the intervals of rest, if any, to which he is entitled,

(d) the days of rest to which he is entitled, and

(e) where the work is carried on by a system of relays, the relay to which he belongs

(2) The entries in the register prescribed by sub-section (1) shall be such that workers working in accordance therewith would not be working in contravention of any of the provisions of this Chapter

(3) No person shall be employed in a mine until particulars required by sub-section (1) have been recorded in the register in respect of such person and no person shall be employed except during the periods of work shown in respect of him in the register.

* Substituted by Act V of 1935

† Inserted by Act V of 1935

(4) For every mine to which the [Central Government]* may, by general or special order, declare this sub-section to be applicable, there shall be kept in the prescribed form and place a register which shall show at any moment the name of every person then working below ground in the mine.

CHAPTER VII

REGULATIONS, RULES AND BYE LAWS

29 The [Central Government]* may by notification in the [official Gazette]† make regulations consistent with this Act

for all or any of the following purposes, namely —

(a) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector ,

(b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mine under this Act ;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them ,

(d) for prescribing the qualifications of managers of mines and of persons acting under them ;

(e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency ;

(f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates ;

(g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications.

(h) for providing for the making of inquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency ,

(i) for regulating, subject to the provisions of the Indian Explosives Act, 1884,‡ and of any rules made thereunder the storage and use of explosives ,

(j) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women ,

(k) for providing the safety of the persons employed in a mine, their means of entrance thereinto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and subsidences ,

(l) for providing for the safety of the roads and working places

* In British India, the words within brackets have been substituted by G. I Order of 1937.

† In of 1937.

‡ IV of 1904.

in mines including the siting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine

(m) for providing for "and regulating * the ventilation of mines and the action to be taken in respect of dust and noxious gases ,

(n) for providing for the care and the regulation of the use of all machinery and plant and of all electrical apparatus used for signalling purposes ,

(o) for requiring and regulating the use of safety lamps in mines

†(p) for providing against explosions or ignitions or irruptions of or accumulation of water in mines and against dangers arising therefrom and for prohibiting restricting or regulating the extraction of minerals in circumstances likely to result in or to aggravate irruptions of water or ignitions in mines

(q) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed in other matters provided for by regulations to be furnished by owners agents and managers of mines and for prescribing the forms of such notices returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted ,

(r) for prescribing the plans to be kept by owners agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record ,

(s) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines ,

(t) for prescribing the form of, and the particulars to be contained in the notice to be given by the owner, agent or manager of a mine under section 14 and

(u) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act 1890 † or of any public work or classes of public works which the [Central Government]§ may, by general or special order specify in this behalf

Power of Central Government to make rules

30 The [Central Government]§ by notification in the [official Gazette]|| make rules consistent with this Act for all or any

of the following purposes, namely —

(a) for providing for the appointment of chairman and members of Mining Boards, and for regulating the procedure of such Boards ,

*(aa) for prescribing the form of certificates of fitness required by section 26A and the circumstances in which such certificates may be granted and revoked

(b) for providing for the appointment of Courts of inquiry under section 21, for regulating the procedure and powers of such Courts

* Inserted by Act VI of 1936

† Substituted by Act VI of 1936

‡ 1A of 1890

§ " " "

1937

1937

* Inserted by Act V of 1933

I Order of
of 1937
I Order of
1937

for the payment of travelling allowance to the members, and for the recovery of the expenses of such courts from the manager, owner or agent of the mine concerned ,

(c) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking-water, the supply and maintenance of medical appliances and comforts,* and the training of men in ambulance work ,

“(cc) for prescribing the forms of notices required under section 23B, and for requiring such notices to be posted also in specified vernaculars , †

(d) for defining the persons who shall, for the purposes of section 24, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity ,

(e) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner “to have completed their fifteenth year” ‡ and for prescribing the manner and the circumstances in which such certificates may be granted and revoked ,

“(ee) for prescribing the form of certificates of fitness required by section 26A and the circumstances under which such certificates may be granted and revoked ,”§

(f) for prescribing the form of “registers” ‡ required by section 28 ,

(g) for prescribing abstracts of this Act “and of the regulations and rules || and the vernacular in which the abstracts” ¶ and bye-laws shall be posted as required by sections 32 and 33 ,

(h) for requiring the fencing of any mine or part of a mine, whether the same is being worked or not, where such fencing is necessary for the protection of the public

(i) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890 ,

(j) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports the persons and authorities to whom they are to be furnished the particulars to be contained in them and the times within which they are to be submitted , and

(k) generally to provide for any matter not provided for by this Act or the regulations, provisions for which is required in order to give effect to this Act

Power of Central Government
to require rescue stations to be
established

***30A** The [Central Government]† may by notifications in the [official Gazette]‡ make rules under this section—

(a) requiring the establishment of central rescue stations for the specified mines and for all mines in a specified area, and for all mines in a specified area, rescue stations shall be established,

and regulating the constitution, powers and functions of, and the conduct of business by, the authorities (which shall include representatives of the owners and managers of, and of the miners employed in the mines or groups of mines concerned) charged with such management,

(c) prescribing the position, equipment, control, maintenance and functions of central rescue stations

(d) providing for the levy and collection of a duty of excise (at a rate not exceeding six pies per ton) on coke and coal produced in and despatched for mines specified under clause (a) in any group or included under clause (a) in any specified area, the utilisation of the proceeds thereof for the creation of a central rescue station fund for such group or area and administrations of such funds,

(e) providing for the formation, training, composition, and duties of rescue brigades, and

(f) providing generally for the conduct of rescue work in mines

31 (1) The power to make regulations and rules conferred by sections 29, 30 and 30A§ is subject to the condition that the regulations and rules shall be made after the date specified in section 23 of the General Clauses Act, 1897|| as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information

(2) The date to be specified in section 23 of the General Clauses Act, 1897|| as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information

(3) Before the draft of any regulation† is published under this section it shall be referred‡ to every Mining Board constituted in [British India]*** which is in the opinion of the [Central Government]† concerned with the subject dealt with by the regulation†† and regulation shall not be so published until each such Board has

† has been inserted in British India by Act
rec in Burma —
in the Gazette make regulations under

- (a) requiring groups of specified mines to establish central rescue stations
(b) prescribing the position equipment control maintenance and functions of such

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had a reasonable opportunity of reporting as to the expediency of making the same and to the suitability of its provisions

"(3A) No rule shall be made unless the draft thereof has been referred to every Mining Board constituted [in the part of British India appointed by the rule]* and unless each such Board had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions"†

(4) Regulations and rules shall be published in the [official Gazette]‡ and, on such publication, shall have effect as if enacted in this Act

§31A Notwithstanding anything contained in sub-sections (1), (2) and (3) of section 37, regulations under clause (1) and clauses (4) to (5) inclusive of section 29 may be made without previous publication and without previous reference to Mining Boards, if the [Central Government]§ is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference

Provided that any regulations so made shall not remain in force for more than twelve years from the making thereof "

32. (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector, frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine —

(2) If any such owner, agent or manager—

(a) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or

(b) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient,

the Chief Inspector or Inspector may—

(i) propose a draft of such bye-laws as appear to him to be sufficient, or

(ii) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient, and shall send such draft bye laws or draft amendments to the owner, agent or manager, as the case may be for consideration

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the words "British Burma," vide G I Order of 1937.

Inspector to the owner, agent or manager under the provisions of sub-section (2), the Chief Inspector or Inspector and the owner, agent, or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (1) the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board, or, where there is no Mining Board to such officer or authority as the [Central Government]* may, by general or special order, appoint in this behalf

(4) (a) When such draft bye laws have been agreed to by the owner agent or manager and the Chief Inspector or Inspector, or when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the [Central Government]* for approval

(b) The [Central Government]* may make such modifications of the draft bye-laws as it thinks fit

(c) Before the [Central Government]* approves the draft bye-laws, whether with or without modifications they shall be published in such manner as the [Central Government]* may think best adapted for informing the persons affected, notice of the proposal to make the bye laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected, should be sent to the [Central Government]*

(d) Every objection shall be in writing and shall state—

(i) the specific grounds of objection and

(ii) the c

(e) The

asked for

made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit

(5) The bye-laws when so approved by the [Central Government]* shall have effect as if enacted in this Act, and the owner agent or manager of the mine shall cause a copy of the bye-laws, in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine where the bye-laws may be conveniently read or seen by the persons employed, and, as often as the same become defaced obliterated or destroyed, shall cause them to be renewed with all reasonable despatch

(6) The [Central Government]* may, by order in writing, rescind, in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly

33 There shall be kept posted up at or near every mine in English

Posting up of extracts from
Act regulations etc

and in such vernacular or vernaculars as
may be prescribed, the prescribed abstracts
of the Act and of the regulations and rules

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G I Order of 1937.

CHAPTER VIII

PENALTIES AND PROCEDURE

34 (1) Whoever obstructs the Chief Inspector, an Inspector or

Obstruction

any person authorised under section 7 in the discharge of his duties under this Act,

or refuses or wilfully neglects to afford the Chief Inspector an Inspector or such person, any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees

35 Whoever—

Falsification of records etc

(a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate, or

(c) makes or produces or uses any false declaration statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate or the renewal of a certificate, under this Act or any employment in a mine, or

(d) falsifies any plan or register or record the maintenance of which is required by or under this Act, or

(e) makes, gives or delivers any plan return, notice, record or

— — — — — a term which may extend to three months or with fine which may extend to five hundred rupees or with both

Notes—This section prescribes a punishment for not preparing a plan it is very unlikely that in such circumstances an incorrect plan would be submitted 64 C L J 308=A I R 1936 Cal 727

36 Any person who, without reasonable excuse the burden of

Omission to furnish plans etc

proving which shall lie upon him, omits to make or furnish in the prescribed form or

manner or at or within the prescribed time any plan return notice, register record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to two hundred rupees

37 Whoever, save as permitted by section 25, contravenes any

Contravention of provisions regarding employment of labour,

provision of this Act or of any regulation, rule or bye-law or of any order made thereunder

or regulating

the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees

38 (1) Whoever, in contravention of the provisions "of sub-section (1)"* of section 20, fails to give notice

Notice of accidents

of any accidental occurrence shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees, or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both

* (2) Whoever in contravention of a direction made by the [Central Government]† under sub section (2) of section 20 fails to record in the prescribed register or to give notice of any accidental occurrence shall be punishable with fine which may extend to five hundred rupees "

39 Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order

Disobedience of orders

made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing contravention with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction

40 (1) Notwithstanding anything hereinbefore contained who-

Contravention of law with dangerous results

ever contravenes any provision of this Act or of any regulation, rule or bye law or of any order made thereunder shall be punishable if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both or if such contravention results in serious bodily injury, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both, or, if such contravention otherwise causes injury or danger to workers or other persons in or about the mine with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1)

(3) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured or, in the case of his death, to his legal representative

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for resenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal

* The words within quotations have been inserted by Act V of 1935

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

41 No prosecution shall be instituted against any owner agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector

42 No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed

43 No Court inferior to that of a [Presidency Magistrate or]* Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner agent or manager of a mine or any offence which is by this Act made punishable with imprisonment

44 (1) If the Court trying any case instituted at the instance of the Chief Inspector or of the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceeding and report the matter to the [Central Government]† with a view to such reference being made

(2) On receipt of a report under sub section (1), the [Central Government]† may refer the case to a Mining Board or a Committee, or may direct the Court to proceed with the trial

CHAPTER IX

MISCELLANEOUS

45 If any question arises as to whether any excavation or working is a mine within the meaning of this Act the [Central Government]† may decide the question, and a certificate signed by a Secretary to the [Central Government]† shall be conclusive on the point

46 (1) The [Central Government]† may by notification in the [Official Gazette]† exempt either absolutely or subject to any specified condition § any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of this Act

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 26 unless it is also exempted from the operation of all the other provisions of this Act ||

Power to alter or rescind
orders

47 The [Central Government]^a may reverse or modify any order passed under this Act[†]

Application of Act to Crown
mines

48 This Act shall apply to mines belonging to the Crown

49 No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Repeals

50 [Repealed by Act 12 of 1927]

THE SCHEDULE

(See section 50)

ENACTMENTS REPEALED

[Repealed by Act 12 of 1927]

THE MOTOR VEHICLES ACT, (VIII OF 1914)

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SCHEDULE

THE INDIAN MOTOR VEHICLES ACT, 1914

(ACT NO VIII OF 1914)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the Governor General's assent on the 28th February, 1914)

An Act to consolidate and amend the law relating to motor vehicles in British India.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India, It is hereby enacted as follows—

been substituted by G. I. Order of
Governor-in-Council G. I. Order of 1937
and by G. I. Order of 1937 have been
any author or subject to his control

Notes — 'The development of the use of motor vehicles as the result of the increasing

the convenience of motorists and to give increased facilities for motor travel. The Motor Vehicle International Circular on Act 1912 (XII of 1912) was the first step in this direction and its provisions are re-enacted in the present Bill' — *Statement of Objects and Reasons*

PART I

PRELIMINARY

Short title extent and commencement

[1 (1) This Act may be called the Indian Motor Vehicles Act, 1914

(2) This Act except Part III thereof, extends to the whole of British India including British Baluchistan the Santhal Parganas and the Pargana of Sipit. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab*, Bihar and Orissa, the North-West Frontier Province and Delhi. The [Provincial Government]† of any other Province may, by notification in the 'official Gazette' ‡ extend Part III to the whole or any part of such Province.

(3) It shall come into force on such date as the Central Government† by notification in the 'official Gazette' ‡ may direct.]‡

Notes—Part III deals with licensing and control of motor vehicles. It is extended in the first instance to those Provinces in which or in parts of which such provisions already exist, but the other local governments can notify its extension within their jurisdiction.—*Notes on Clauses*

2 'Motor Vehicle' includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled on a road by electrical or mechanical power either entirely or partially

Definitions

'prescribed' means prescribed by rules under this Act

'public place' means a road, street, way or other place whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass

Notes—Motor car is licensed as carriage. *Halsbury Vol 27 p 233*

PART II

PROVISIONS OF GENERAL APPLICATION

Prohibition of driving motor vehicles by persons under 18

3 (1) No person under the age of eighteen years shall drive a motor vehicle in any public place

* After this the word 'Burma' has been omitted by G. I. Order of 1937

† Substituted by G. I. Order of 1937

‡ In Burma for section 1 read the following section 1 1 This Act may be called the Burma Motor Vehicles Act

(2) No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public place, and in the event of a contravention of sub-section (1), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge

Notes—In England a person under seventeen is disqualified for obtaining a full licence but if
(Motor car Act
of 16 years to
erments that it was unsafe to allow boys of sixteen to drive such vehicles—110100.
of the Select Committee

Duty to stop vehicle for regulating traffic and in case of accident

4 The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

(a) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(b) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be, alarmed by the motor vehicle, or

(c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle, and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle

Notes—This clause is intended to afford protection to the public everywhere against reckless and inconsiderate driving to which it would appear to be entitled—*Notes on Clauses* The person in charge of a car to whose orders the driver is submitting is a police officer who is not engaged at a motor bus for inspection down as to stop A I R 1933 1934 Nag 65=35 Cr L J 696

—100100 L J 696

5 Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature condition and use of the place, and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five-hundred rupees

Notes—This clause is intended to afford protection to the public everywhere against reckless and inconsiderate driving to which it would appear to be entitled—*Notes on Clauses* See also A I R 1932 Cal 461=39 C W N 246 The provision apparently creates four distinct offences only one of which can be included in a single conviction R v Wells (1904) 63 J P 392 see also *Throughton v Manneng* 69 J P 237 Deviating from line of traffic does not amount to rash driving 25 Bom L R 1066 49 A 754, 28 O L J 492

This section applies to person who is driving a car in a manner which would in the road at the time adequate punishment As what amounts to

PART III

LICENSING AND CONTROL

6 No person shall drive a motor vehicle in a public place unless

Licensing of drivers

he is licensed in the prescribed manner,

and no owner or person in charge of a

motor vehicle shall allow any person who is not so licensed, to drive it

Provided that subject to rules made by the [Provincial Government]* in this behalf this section shall not apply to a person receiving instruction in driving a motor vehicle

* . . .

which this
instruction in
nent—Notes
is without a
licence was
section 28
that a police
of a private

person but can only do so when the car is actually being driven on the public road 97
Ind Cas 48=A I R 1926 P 446 An owner is not liable when a motor is driven by an
unlicensed driver without his knowledge A I R 1928 Cal 410 Allow implies
permission express or implied A I R 1932 Bom 474

Transfer of licence

7 The holder of a licence shall not
allow it to be used by any other person

Notes—Vide A I R 1933 Bom 460

Production of licence

8 The driver of a motor vehicle shall
*produce his licence upon demand by any
police-officer*

Notes—Words on demand in this section mean immediate production and should
not be interpreted to mean within a reasonable time after demand The word
demands connotes something imperative that brooks no delay A I R 1936 Nag 150=
37 Cr L J 1012 =164 Ind Cys 351

When upon demand by a police officer a person driving a motor vehicle could not
offence under
Ss 8 and 9 do
of the Act and

Extent of validity of licence to
drive

9 Every licence to drive a motor
vehicle shall be valid in such area as may
be specified therein

[Provided that no licence shall specify any area outside the
province in which it is granted unless it is issued† in accordance with
such conditions and restrictions as "the Provincial Government of that
area † may impose]§

Notes—Sections 6 and 9 do not apply to permits issued under R 21 of the U P Motor
Vehicles Rules of 1924 A I R 1928 All 492

Registration of motor vehicles

10 (1) The owner of every motor
vehicle shall cause it to be registered in the
prescribed manner

(2) Such registration shall be valid in such area as may be specified
in the certificate of registration

[Provided that no certificate of registration shall be valid 'in any area' * outside the province in which it is granted unless it is issued in accordance with such conditions and restrictions as 'the Provincial Government of that area' † may impose]‡

by validity beyond
governor General in
d a clause to the
vince if made in
Council shall be
ortgagee in whose
87 Bom L R

11 (1) The [Provincial Government]§ subject to the condition or previous publication shall make rules for the purpose of carrying into effect the provisions of this Act and of regulating in the whole or any part of [the territories under its administration]|| the use of motor vehicles or any class of motor vehicles in public places

(2) In particular, and without prejudice to the generality of the foregoing powers the [Provincial Government]§ may make rules for all or any of the following purposes, namely —

(a) Providing for the registration of motor vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration the issue of certificates of registration, the notification of any changes of ownership, and (subject to the provisions of section 10)* the area in which 'and the duration for which ** certificates of registration shall be valid,

(b) providing for facilitating the identification of motor vehicles by the assignment of distinguishing numbers to such vehicles and the displaying of number and name plates thereon, or in any other manner,

(c) regulating the construction and equipment of motor vehicles including the provision and use of lights bells, horns, brakes, speed-indicators or other appliances,

(d) prescribing the authority by which, and the conditions subject to which drivers of motor vehicles or any class of such drivers may be licensed the fees payable in respect of such licences and (subject to the provisions of section 9)* the area within which and the duration for which licences shall be valid

"(dd) prescribing the authority by which and the conditions and limitations subject to which licences may be suspended or cancelled" ††

(e) prescribing the conditions subject to which, and the fees (if any) on payment of which motor vehicles may be let or plied for hire in public places generally or in any particular public place,

†
‡
§
1937

||
of 1934

of

or

* The words within brackets have been omitted in Burma.

** The words with in quotations have been inserted by Act 15 of 1924

†† The words within quotations have been added by Act 27 of 1920

(f) prescribing the precautions to be observed when motor vehicles are standing in any public place ,

(g) limiting the speed at which motor vehicles may be driven generally or in any particular public place ,

(h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the [Provincial Government],* be attended with danger or inconvenience to the public ; and

(i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic

(3) All rules made under this section shall be published in the [official Gazette]† , and on such publication, shall have effect as if enacted in this Act

A I R 1927 All 478 The rules should be made clear 97 Ind Cas 847 The word "accident" means an event which actually to drive J 571=
504=A I R 1928 Mad 364
motor lorry does not amount to
493=A I R 1935 Mad 577=60 J

1 The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the [Provincial Government]* under section

11, prohibiting or regulating the driving of motor vehicles in any public place, or limiting the speed of motor vehicles in any such place, and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers

Notes—Where an owner has permitted or authorised the use of his motor vehicle, he is under Part II rr 3 and 19 of the rules framed by the Governor General in Council under s 11 liable for any contravention of the rules committed by his licensee or servant during the period of such user 26 C L J 37.

13. The [Provincial Government]* may, by notification in the [official Gazette]† exclude any area specified in such notification, from the operation of this Part, and may, by a like notification, exempt either generally or for a

Power to Provincial Government to exclude areas of motor vehicles from this Part

specified period any motor vehicle or class of motor vehicles from the operation of all or any of the provisions of this Part

operation of all or any of the provisions of this Part

PART IV

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

14 (1) The [Central Government]* may [for the purpose of implementing any international convention relating to motor

Power of Central Government to make rules

1937
↑
1937.

G I Order of
Order of 1937.
G. I
Order of 1937.

traffic]* make rules for all or any of the following purposes namely —

(i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their motor vehicles out of [British India]† or to drivers of such vehicles when proceeding out of [British India]† for the purpose of driving such vehicles and

(ii) prescribing the conditions subject to which motor vehicles brought temporarily into [British India]† by persons intending to make a temporary stay there may be possessed used and driven

(2) All rules made under this section shall be published in the [official Gazette]‡ and, on such publication shall have effect as if enacted in this Act

Notes — Vide 15 P. L. R. 1919 A. I. R. 1919 All 750 A. I. R. 1929 Pat 597

Saving 15 Nothing in this Act or in any rule made by the [Provincial Government]§ under section 11 || relating to—

(a) the registration of motor vehicles

(b) requirements as to construction, identification or equipment of such vehicles or

(c) the licensing or qualifications of drivers of such vehicles shall apply in the case of any motor vehicle such as is referred to in clause (ii) of sub section (1) of section 14, or of any person possessing using or driving the same provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with

PART V

MISCELLANEOUS

16 Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall if no other penalty is elsewhere provided in this Act for such contravention be punishable with fine which may extend to one hundred rupees and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to two hundred rupees

Notes — This section lays down a general penal clause for contravention of any provision of the Act if such contravention is not otherwise specially provided for. All such violations of the Act or any rule made hereunder are punishable with a fine of rupee —

inserted by G. I. Order of 1937

Order of 1937 In Burma for the words read the word Gazette vide G. B. Order of 1937

§ In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the word Governor vide G. B. Order of 1937

|| The words within quotations have been substituted by Act 13 of 1916

broken and unless this is done the trial is bad A I R 1937 Oudh 444=38 Cr L J 947=170 Ind Cas 416 see also 33 Cr L J 326=116 Ind Cas 978 A I R 1931 Oudh 370=35 Cr L J 1161=150 Ind Cas 911=11 O W N 828 A I R 1936 All 761=1936 A L J 1011=165 Ind Cas 716 Where the driver of a motor vehicle fails to produce his licence immediately on demand having kept it in a not easily accessible part of the car but produces it subsequently after very little delay the offence committed is of a technical nature and it is a case in which the prosecution might properly have been waived 164 Ind Cas 351=37 Cr L J 1012=A I R 1936 Nag 150 The mere payment to the accused of the cost of petrol used while his lorry is at the disposal of

the lorry It is equivalent to accused therefore cannot say he had no G permit 35 M W N 325=A I R Mad 233 Where motorist actually paying it on spot, 128 Motor cars carrying

mails are not exempt 29 Bom 4 R 191=28 Cr L J 307 Driver's permit is not valid outside district of Superintendent signing unless countersigned by Superintendent of district in which car is driven A I R 1934 Bom 201 Number

section offence

All 69 Order of suspension is part of sentence A I R 1933 Rang 329 In the

there was a consequent conviction

31 This section is upon anybody who

der the Act A I R

1978 All 261 A Magistrate has no jurisdiction to suspend a permit to ply for hire a motor lorry 110 Ind Cas 803 A servant has no implied authority to engage a stranger to do work on behalf of his master 47 C L J 400

17 No Court inferior to that of [a Presidency Magistrate or]* a

Cognizance of offences Magistrate of the second class shall try

any offence punishable under this Act

or any rule made thereunder

Notes—This section limits the trial of offences under the Act to Courts not inferior to those of a Presidency Magistrate or a Magistrate of the second class—*Notes on Clauses*

Cancellation and suspension of licence and disqualification for obtaining licence

18 (1) [A Provincial Government † may in its discretion]‡—

(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit

§ (1A) The prescribed authority may, subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act

(2) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a motor vehicle shall if such person holds a licence under the Act, cause particulars of thereon and may in respect of such if any exercise the like powers as are on the [Provincial Government]!

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction

(3) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (2) may suspend such licence until the termination of the proceedings before it

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of every endorsement, in accordance with the provisions of this section shall be sent to the authority by which such licence has been granted

(5) Every holder of a licence shall, when called upon to do so produce his licence before any authority acting under this section

(6) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence

(7) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain a licence without giving particulars of such

Notes—The best way of stopping to exercise its powers under sub-section of the conviction to be endorsed on it suspend the licence 90 Ind Cas 320=

19 [Repealed by Act 12, 1927]

Notes—This section empowers the Local Government to cancel or suspend any licence or to declare any person disqualified for obtaining a licence thus protecting the public against incompetent and unsuitable drivers—*Notes on Clauses*

SCHEDULE

(Repealed by Act XII of 1927)

THE MOTOR SPIRIT (DUTIES) ACT, 1917

CONTENTS

SECTION	SECTION
1 Short title extent and duration	5. Application of Sea Customs Act and rule making power
2 Definitions	6. Imposition of additional duty on motor spirit imported into British India
3 Imposition of excise duty on motor spirit manufactured in British India	
4 Issue of motor spirit after commencement of Act	

THE MOTOR SPIRIT (DUTIES) ACT, 1917.

(ACT NO II OF 1917.)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 16th February, 1917)

An Act to provide for the imposition and levy of certain duties on motor spirit

WHEREAS it is expedient to impose an excise duty and to increase the existing customs duty on motor spirit, It is hereby enacted as follows—

Short title, extent and duration

1 (1) This Act may be called the Motor Spirit (Duties) Act, 1917.

[(2) It extends to the whole of British India, *]†

(3) It shall remain in force during the continuance of the present war, and for a period of six months thereafter

Definitions

2 "Manufactory" means any place where motor spirit is refined or otherwise prepared.

"Motor spirit" means any inflammable hydro-carbon (including any mixture of hydro carbons or any liquid containing hydro-carbon) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle

3 (1) There shall be levied and collected at every manufactory, in [British India]‡ on all motor spirit produced in such manufactory, a duty at the rate of "eight annas"§ on each imperial gallon.

Explanation—Motor spirit is said to be produced within the meaning of this section when it is issued out of the premises of the manufactory

(2) If any duty payable under sub-section (1) is not paid within the time fixed by a notice issued in accordance with any rules made under this Act, the authority to which such duty is payable may, in lieu thereof, recover any sum not exceeding double the amount of the duty so unpaid, which such authority may in its discretion think it reasonable to require

(3) All sums recoverable under sub section (1) shall be recovered in the manner prescribed in the Indian Income-Tax Act, 1886,|| section 30, sub sections (1), (2) and (3), with respect to the sums therein referred to

4 (1) After the commencement of this Act, no person shall issue any motor spirit out of the premises of any manufactory except in accordance with the provisions of rules made under this Act in that behalf, or, until such rules are made, in accordance with the general or special orders of the [Central Government]¶

(2) Whoever contravenes the provisions of sub-section (1), shall be punishable with fine which may extend to rupees one thousand or to a sum double the amount of the duty payable on any motor spirit so issued, whichever is greater

5 (1) The [Central Government]¶ may, by notification in the [official Gazette],** declare that any of the provisions of the Sea Customs Act, 1878†† relating to the levy of and exemption

Issue of motor spirit after commencement of Act

Application of Sea Customs Act and rule making power

* The word 'and' repealed by Act III of 1910 has been omitted
omitted by G B Order of 1937
Order of 1937

| Act II of 1886
ment have been substituted by G I.
he word 'Governor,' vide G B Order

Ord of 1937
** In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word "Gazette" vide G B Order of 1937.
†† Act V III of 1878

from custom duties, drawback of duty warehousing, offences and penalties, confiscation, and the procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duty on motor spirit imposed by section 3 and may further, for the purpose of providing for the assessment and collection of the said duty and for purposes ancillary thereto make rules—

(i) imposing on owners of manufactories the duty of furnishing returns, and keeping records and books, prescribing the forms of such returns, records and books and the particulars to be contained therein respectively, and the manner in which the same are to be verified and all such other conditions thereof as may be necessary,

(ii) providing for the regulation of the issue of motor spirit out of manufactories, the assessment of the duty, and the issue of notices requiring payment and for the recovery of unpaid duty,

(iii) providing for the inspection of manufactories and for the taking of samples, and for the making of tests of any substance produced therein

(iv) generally carrying into effect the purposes hereinbefore specified

(2) In making any rule under the rule-making power hereinbefore conferred, the [Central Government]* may declare that any breach thereof shall be punishable with fine which may extend to rupees five hundred.

6 In addition to the duty imposed by section 3 of Indian Tariff Act, 1894† as subsequently amended read with Schedule II of the said Act, there shall be levied and collected at every port to which that Act applies a duty at the rate of six annas on each imperial gallon of motor spirit, and this additional duty shall be deemed to be a duty imposed under section 3 of the said Act and that Act shall apply accordingly

Imposition of additional duty on motor spirit imported into British India

THE INDIAN NAVAL ARMAMENT ACT, 1923.

CONTENTS

SECTION

- 1 Short title extent and commencement
- 2 Definitions
- 3 Restriction on building or equipping vessels of war
- 4 Licences
- 5 Offences against the Act
- 6 Liability of ships to forfeiture
- 7 Seizure detention and search of ships

SECTION

- 8 Procedure in forfeiture of ships
- 9 Disposal of forfeit
- 10 Special proof of relevant facts
- 11 Penalties for proceeding to sea after seizure
- 12 Power to enter dockyards etc
- 13 Courts by which and conditions subject to which offences may be tried
- 14 Indemnity

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor, vide G. B. Order of 1937.
† Act VIII of 1894

THE INDIAN NAVAL ARMAMENT ACT, 1923.

(ACT NO VII OF 1923)

PASSED BY THE INDIAN LEGISLATURE

(Received the assent of the Governor-General on the 5th March 1923)

An Act to give effect in British India to the Treaty for the limitation of Naval Armament

WHEREAS it is expedient to give effect in British India to the Treaty for the limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February 1922 and to the Treaty for the Limitation and Reduction of Naval Armament signed at London on behalf of His Majesty on the twenty-second day of April, 1930* It is hereby enacted as follows —

Notes —The object of the Bill is to give effect to the provisions of the Treaty so far as British India is concerned by reducing the building of vessels of war

Short title extent and com- [1 (1) This Act may be called the
mencement Indian Naval Armament Act, 1923

(2) It extends to the whole of British India, and applies also to all subjects and servants of His Majesty in other parts of India

(3) It shall come into force on such date as the Central Government † may, by notification in the 'official Gazette † appoint ‡

Notes —It came into force on 10th November 1923

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'competent Court' means the High Court or such other Court having unlimited original civil jurisdiction as the [Central Government]§ may declare to be a competent Court for the purposes of this Act

(b) 'ship' means any boat, vessel battery or craft whether wholly or partly constructed, which is intended to float or is capable of floating, on water and includes all equipment belonging to any ship, and

(c) 'the Treaty' means those Articles of the Treaty for the Limitation of Naval Armament signed at Washington on behalf of His Majesty on the sixth day of February 1922 and of the Treaty for the Limitation and Reduction of Naval Armament signed at London on behalf of His Majesty on the twenty-second day of April, 1930 || which are set out in the Schedule

Restriction on building or 3 No person shall except under and
equipping vessels of war in accordance with the conditions of a
licence granted under this Act,—

* Inserted by Act VIII of 1930

† Substituted by G. I. Order of 1937

‡ In Burma for section 1 read the following —

1 This Act may be called the Naval Armament Act

§ In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the word Governor vide G. B. Order of 1937

|| Inserted by Act VIII of 1931

(a) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war, or

(b) despatch or deliver, or allow to be despatched or delivered, from any place in [British India]* any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or in a State in India otherwise than under and in accordance with any law for the time being in force in that part of State

4 (1) A licence under this Act for any of the purposes specified in section 3 may be granted by the [Central Government]† and shall not be refused unless it appears to the [Central Government]† that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the Treaty, and, where a licence is granted subject to conditions, the conditions shall be such only as the [Central Government]† may think necessary for the purpose aforesaid.

(2) An application for a licence under this section shall be in such form and shall be accompanied by such designs and particulars as the [Central Government]† may, by general or special order, require

5 (1) If any person contravenes any of the provisions of section 3, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both

(2) Where an offence punishable under sub-section (1) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent.

(3) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorise the destruction or confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship.

6 Any ship which has been either wholly or partly, built, altered, armed, or equipped as a vessel of war in [British India]* in contravention of section 3, or in any other part of His Majesty's Dominions or any State in India in contravention of any like provision of law in force in that part of State, shall, if found in [British India]* be liable to forfeiture under this Act

Seizure, detention and search of ships

(a) any [Presidency Magistrate or]† Magistrate of the first class, or

(b) any commissioned officer on full pay in the military, naval or air service of His Majesty § or

* In 1980-81

† In

1937 I

† In

55 Cc

been omitted

(c) any officer of customs or police-officer not below such rank as may be designated in this behalf, by the [Central Government]*

may seize such ship and detain it, and if the ship is found at sea within the territorial waters of [British India]† may bring it to any convenient port in [British India]‡

(2) Any officer taking any action under sub-section (1) shall forthwith report the same through his official superiors to the [Central Government]*

(3) The [Central Government]* shall, within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable

8 An (1) application for the forfeiture of a ship under this Act may be made by, or under authority from, the [Central Government]* to any competent Court within the local limits of whose jurisdiction the ship is for the time being

(2) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit

(3) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow as merely as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, and any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly

(4) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to His Majesty

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at or by his negligence facilitated in any way a contravention of section 3 in respect of the ship and such ship has not been built as a vessel of war, it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale proceeds thereof

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the [Central Government]* to such condition as not to render it liable to forfeiture under this Act

(5) The [Central Government]* or any person aggrieved by any order of a Court, other than [a High Court]‡ under this section may, within three months of the date of such order, appeal to the High Court

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† In Burma for the words within brackets read 'British Burma,' vide G B Order of 1937

‡ In Burma for 'a High Court' read "the High Court" vide G B Order of 1937

(a) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war, or

(b) despatch or deliver, or allow to be despatched or delivered, from any place in [British India]* any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or in a State in India otherwise than under and in accordance with any law for the time being in force in that part of State

4 (1) A licence under this Act for any of the purposes specified in section 3 may be granted by the [Central Government]† and shall not be refused unless it appears to the [Central Government]† that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the Treaty, and, where a licence is granted subject to conditions, the conditions shall be such only as the [Central Government]† may think necessary for the purpose aforesaid

(2) An application for a licence under this section shall be in such form and shall be accompanied by such designs and particulars as the [Central Government]† may by general or special order, require

5 (1) If any person contravenes any of the provisions of section 3, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both

(2) Where an offence punishable under sub-section (1) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent

(3) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorise the destruction or confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship

6 Any ship which has been either wholly or partly, built, altered, armed, or equipped as a vessel of war in [British India]* in contravention of section 3, or in any other part of His Majesty's Dominions or any State in India in contravention of any like provision of law in force in that part of State, shall, if found in [British India]* be liable to forfeiture under this Act

Seizure, detention and search of ships 7 (1) Where a ship is liable to forfeiture under this Act,—

(a) any [Presidency Magistrate or]‡ Magistrate of the first class, or

(b) any commissioned officer on full pay in the military, naval or air service of His Majesty,§ or

* In Burma for 'British India' read "British Burma" vide G. B. Order of 1937

† In British India the words "Central Government" have been omitted

‡ I
§ C

Order of 1937
37, have

(c) any officer of customs or police-officer not below such rank as may be designated in this behalf, by the [Central Government]*

may seize such ship and detain it, and if the ship is found at sea within the territorial waters of [British India,]† may bring it to any convenient port in [British India]‡

(2) Any officer taking any action under sub-section (1) shall forthwith report the same through his official superiors to the [Central Government]*

(3) The [Central Government]* shall within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable

8 An (1) application for the forfeiture of a ship under this Act may be made by, or under authority from, the [Central Government]* to any competent Court within the local limits of whose jurisdiction the ship is for the time being

(2) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit

(3) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow, as merely as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, and any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly

(4) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to His Majesty

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at or by his negligence facilitated in any way, a contravention of section 3 in respect of the ship, and such ship has not been built as a vessel of war it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale proceeds thereof

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the [Central Government]* to such condition as not to render it liable to forfeiture under this Act

(5) The [Central Government]* or any person aggrieved by any order of a Court, other than [a High Court]‡ under this section may, within three months of the date of such order, appeal to the High Court

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor" vide G. B. Order of 1937

† In Burma for the words within brackets read "British Burma," vide G. B. Order of 1937

‡ In Burma for "a High Court" read "the High Court,"

B. Order of 1937

9 Where a ship has been forfeited to His Majesty under section 8, it may be disposed of in such manner as the [Central Government]* directs

D disposal of forfeit

Provided that where the ship is sold under this section due regard shall be had to the obligations imposed by the Treaty

10 If, in any trial, appeal or other proceeding under the foregoing provisions of this Act, any question arises as to whether a ship is a vessel of war, or whether any alteration, arming or equipping of a ship is such as to adapt it for use as a vessel of war the question shall be referred to and determined by the [Central Government],* whose decision shall be final and shall not be questioned in any Court

11 (1) Where a ship which has been seized or detained under section 7 or section 8 and has not been released by competent authority under this Act proceeds to sea, the master of the ship shall be punishable with fine which may extend to one thousand rupees and the owner and any person who sends the ship to sea shall be likewise so punishable unless such owner or person proves that the offence was committed without his knowledge and consent

Penalty for proceeding to sea after seizure

(2) Where any ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any officer empowered by this Act to seize and detain the ship, the owner and master shall further each be liable on the order of the Court trying an offence punishable under sub-section (1), to pay all the expenses of and incidental to such officer being taken to sea and shall further be punishable with fine which may extend to one hundred rupees for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he was taken

(3) Any expenses ordered to be paid under sub-section (2) may be recovered in the manner provided in the Code of Criminal Procedure, 1898† for the recovery of a fine

12. (1) Any person empowered by this Act to seize and detain any ship may at any reasonable time by day or night, enter any dockyard, shipyard or other place and make inquiries respecting any ship which he has reason to believe is liable to forfeiture under this Act, and may search such ship with a view to ascertaining whether the provisions of this Act have been or are being duly observed in respect thereof, and every person in charge of or employed in such place shall on request be bound to give the person so empowered all reasonable facilities for such entry and search and for making such inquiries

(2) The provisions of sections 101, 102 and 103 of the Code of Criminal Procedure, 1898,† shall apply in the case of all searches made under this section

13 No Court inferior to that of a [Presidency Magistrate or]‡ Magistrate of the first class shall proceed to the trial of any offence punishable under this Act, and no Court shall proceed

Courts by which and conditions subject to which offences may be tried

* In British India the words within brackets have been substituted by G. I. Order of 1927. In Burma for the words read the word Governor vide G. B. Order of 1937

† V of 1907

‡ In Burma omit the words within brackets vide G. B. Order of 1937

to the trial of any such offence except on complaint made by, or under authority from the [Central Government.]*

14. No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Indemnity.

THE SCHEDULE

(See section 2.)

ARTICLES OF TREATY FOR THE LIMITATION OF NAVAL ARMAMENT.

ARTICLE V.

No capital ship exceeding 35,000 tons (35,500 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers

ARTICLE VI.

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres)

ARTICLE IX.

No aircraft carrier exceeding 27,000 tons (27,432 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

ARTICLE X.

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres)

exceeding 6 inches (152 millimetres) in calibre, the number of guns is not limited. In either case the number of anti aircraft guns and of guns not exceeding 5 inches (127 millimetres) is not limited

ARTICLE XI

No vessel of war exceeding 10 000 tons (10 160 metric tons) standard displacement, other than a capital ship or aircraft carrier or within the jurisdiction of, any of the Contracting Powers, shall carry a gun with a calibre in excess of 8 inches (203 millimetres) as fighting ships nor taken in time of peace, which are employed on fleet duties the purpose of assisting in the prosecution shall not be within the limitations of this article

ARTICLE XII

No vessel of war of any of the Contracting Powers, hereafter laid down, other than a capital ship, shall carry a gun with a calibre in excess of 8 inches (203 millimetres)

ARTICLE XIV

No preparations shall be made in merchant ships in time of peace for the installation of warlike armaments for the purpose of converting such ships into vessels of war, other than the necessary stiffening of decks for the mounting of guns not exceeding 6 inches (152 millimetres) calibre

ARTICLE XV

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres) in calibre, the number of guns is not limited. In either case the number of anti aircraft guns and of guns not exceeding 5 inches (127 millimetres) is not limited

ARTICLE XVI

If the construction of any vessel of war for a non Contracting Power, is undertaken

* In British India the words within brackets have been substituted by G. I. Order 1937. In Burma for the words read the word "Governor," and G. B. Order of 1937

within the jurisdiction of any of the Contracting Powers, such power shall promptly inform the other Contracting Powers of the date of the signing of the contract and the date on which the keel of the ship is laid; and shall also communicate to them the particulars relating to the ship prescribed in Chapter II, Part 3, Section 1 (b), (d) and (5).

ARTICLE XVIII.

Each of the Contracting Powers undertakes not to dispose by gift, sale or any mode of transfer of any vessel of war in such a manner that such vessel may become a vessel of war in the navy of any foreign Power.

CHAPTER II —PART 3 —SECTION I.

... to each of the other
ship to be laid
extreme beam at or
placement in tons
at the line, extreme
beam at or below waterline, mean draught at standard displacement, at time of
completion

PART 4 —DEFINITIONS

For the purposes of the present Treaty, the following expressions are to be understood in the sense defined in this Part.

Capital Ship

A capital ship, in the case of ships hereafter built, is defined as a vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons (10,160 metric tons) standard displacement or which carries a gun with a calibre exceeding 8 inches (203 millimetres)

Aircraft Carrier.

... a vessel of war with a displacement in excess of 10,000
designed for the specific and exclusive
constructed that aircraft can be launched
and constructed for carrying a more
er article IX or Article X, as the case
may be

Standard Displacement.

The standard displacement of a ship is the displacement of the ship complete, fully manned, engine, and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions and fresh water for crew, miscellaneous stores and implements of every description that are intended to be carried in war, but without fuel or reserve feed water on board

... in
sing
ealy
the
standard condition defined herein

Articles of Treaty for the Limitation and Reduction of Naval Armament.

ARTICLE 3.

... given
r its
ad so
... capital ship, cruiser
carrier, shall not cause any vessel so fitted to be charged against or classified against
or classified in the category of aircraft carriers

ARTICLE 4.

2. As from the coming into force of the present Treaty in respect of all the High Contracting Parties, no aircraft carrier of 10,000 tons (10,160 metric tons) or less standard

displacement, mounting a gun above 6 1/2 inch (155 mm) calibre shall be constructed within the jurisdiction of any of the High Contracting Parties.

ARTICLE 5.

ARTICLE 6.

1. The rules for determining standard displacement prescribed in Chapter II, Part 4 of the Washington Treaty shall apply to all surface vessels of war of each of the High Contracting Parties.

3. Each naval combatant vessel shall be rated at its displacement tonnage when in the standard condition. The word "ton," except in the expression "metric tons" shall be understood to be the ton of 2,240 pounds (1,016 kilos).

ARTICLE 7.

paragraph 2 of this Article.

THE INDIAN NAVY (DISCIPLINE) ACT, 1934.

CONTENTS.

SECTION.	SECTION
1. Short title and commencement	3 Application of Naval Discipline Act to Indian Navy
2. Definition.	4 Repeals

THE INDIAN NAVY (DISCIPLINE) ACT, 1934.

(ACT NO. XXXIV OF 1934)

(Received the assent of the Governor-General on the 8th September, 1934.)

An Act to provide for the application of the Naval Discipline Act to the Indian Navy.

Notes — "In agreement with their opinion expressed by several of the authorities

WHEREAS by section 66 of the Government of India Act among other things enacted that provision may be made by

Or C. H. Vol. I—1

Legislature for the application to the naval forces raised by the [Central Government],* of the Naval Discipline Act subject to such modifications and adaptations as may be made by the said Legislature to adapt the Act to the circumstances of India.

AND WHEREAS it is expedient to make such provision,

It is hereby enacted as follows—

Short title and commencement 1 (1) This Act may be called the Indian Navy (Discipline) Act, 1934

(2) It shall come into force on such date as the [Central Government]* may, by notification in the [official Gazette]* appoint

Definition 2 In this Act unless there is any thing repugnant in the subject or context,—

'the Indian Navy' means the naval forces and ships raised and provided by the [Central Government]*

Application of the Naval Discipline Act to the Indian Navy 3 (1) The Naval Discipline Act shall apply to the Indian Navy as if that Act were in the form in which it is set forth in the First Schedule to this Act

(2) In the application to the Indian Navy of the Naval Discipline Act as so set forth—

(a) "the Indian Navy" has the same meaning as in this Act, and

(b) references to His Majesty's Navy and His Majesty's ships shall be deemed to include the forces and ships constituting the Indian Navy

[4 Repeals—*Repealed by Act 1 of 1938*]

THE FIRST SCHEDULE

(See section 3)

THE NAVAL DISCIPLINE ACT

(29 and 30 Vict. C. 109)

(As modified for application to the Indian Navy)

An Act to make Provision for the Discipline of the Navy

WHEREAS it is expedient to amend the law relating to the Government of the Navy whereon under the good Providence of God the wealth safety and strength of the Kingdom chiefly depend

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled and by the authority of the same as follows

PART I

ARTICLES OF WAR

Public Vessels

1 All officers in command of
Facilities for the performance
of religious duties

Facilities
officers
ships to

Misconduct in the Presence of the Enemy

2 Every flag officer captain commander or officer commanding subject to this Act
Penalty for misconduct in action who upon signal of battle, or on sight of a ship of an enemy which it may be his duty to engage shall not

* Substituted by G. I. Order of 1937

according to his rank,

of making a successful defence, or who in time of action shall improperly withdraw from the fight, shall, if he has acted traitorously, suffer death, if he has acted from cowardice, shall suffer death, or such other punishment as is hereinafter mentioned, and if he has acted from negligence or through other default he shall be dismissed from His Majesty's service with or without disgrace, or shall suffer such other punishment as is hereinafter mentioned

3 Every officer subject to this Act who shall forbear to pursue the chase of any enemy, pirate, or rebel, beaten or flying or shall not relieve and assist a known friend in view to the utmost of his power or who shall improperly forsake his station shall, if he has therein acted traitorously, suffer death, if he has acted from cowardice, suffer death or such other punishment as is hereinafter mentioned, if he has acted from negligence or through other default, shall be dismissed from His Majesty's service, with disgrace or shall suffer such other punishment as is hereinafter mentioned

Penalty for delaying or discouraging the service or deserting his post, etc
4 When any action or any service is commanded, every person subject to this Act who shall presume to delay or discourage the said action or service upon any pretence whatsoever, or in the presence or vicinity of the enemy shall desert his post or sleep upon his watch, shall suffer death or such other punishment as is hereinafter mentioned

5 Every person subject to this Act, and not being a commanding officer, who shall not use his utmost exertions to carry the orders of his superior officers into execution when ordered to prepare for action or during the action, shall, if he has acted traitorously, suffer death, if he has acted from cowardice, shall suffer death, or such other punishment as is hereinafter mentioned, and if he has acted from negligence or through other default, be dismissed from His Majesty's service with disgrace, or suffer such other punishment as is hereinafter mentioned.

Communications with the Enemy

6 All spies for the enemy shall be deemed to be persons subject to this Act and shall suffer death or such other punishment as is hereinafter mentioned
Penalty for spies
7 Every person subject to this Act who shall—
Penalty for corresponding etc, with the enemy

(1) Traitorously hold correspondence with or shall give intelligence to the enemy,
(2) Or fail to make known to the proper authorities any information he may have received from the enemy,
(3) Or who shall relieve the enemy with any supplies
shall suffer death or such other punishment as is hereinafter mentioned

8 Every person subject to this Act who shall without any treacherous intention hold any improper communication with the enemy shall be dismissed with disgrace from His Majesty's service or shall suffer such other punishment as is hereinafter mentioned
Penalty for improper communication with the enemy

Neglect of duty

9 Every person subject to this Act who shall desert his post or sleep upon his watch or negligently perform the duty imposed on him, shall be dismissed from His Majesty's service, with disgrace, or shall suffer such other punishment as is hereinafter mentioned
Penalty for abandoning post, etc

Mutiny

10 Where mutiny
Penalty for mutiny occasioned by acts of violence
tions to suppress such mutiny shall if he has acted traitorously, suffer death, or
Every person subject to this Act who shall suffer death or such other punishment as is hereinafter mentioned

acted from cowardice, shall
after mentioned, if he has
service, with disgrace, or

11 Where a mutiny is not accompanied by violence, the ringleader or ringleaders of such mutiny shall suffer death, or such other punishment as is hereinafter mentioned, and all other persons who shall join in such mutiny, or shall not use their utmost exertions to suppress the same, shall suffer imprisonment or such other punishment as is hereinafter mentioned

12 Every person subject to this Act who shall endeavour to seduce any other person subject to this Act from his duty or allegiance to His Majesty, or endeavour to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned

13 Every person, not otherwise subject to this Act, who, being on board any ship of His Majesty, shall endeavour to seduce from his duty or allegiance to His Majesty any person subject to this Act, shall so far as respects such offence be deemed to be a person subject to this Act, and shall suffer death or such other punishment as is hereinafter mentioned

14 Every person subject to this Act who shall make or endeavour to make any mutinous assemblies or uttering seditious words

15 Every person subject to this Act who shall wilfully conceal any traitorous or traitorous or mutinous practice or design or any traitorous or mutinous words spoken against His Majesty, or any words design, or words practice, or design tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned

16 Every -
Punishment
attempting to s
rior officer.

ment as is hereinafter mentioned

Insubordination

17 Every person subject to this Act who shall wilfully disobey any lawful command of
Penalty for disobedience or using threatening language to superior officer
ment as is hereinafter mentioned

18 Every person subject to this Act who shall quarrel with any other person, not subject to this Act, or shall utter any revoking speeches or words of insult or disturbance, shall suffer imprisonment or such other punishment as is hereinafter mentioned

Desertion and Absence without leave

19. Every person subject to this Act who shall absent himself from his ship or from the place where his duty requires him to be, with an intention of not returning to such ship or place, or who shall absent himself from his ship or place of duty, without returning to such ship or place accordingly that is to

11) If he has deserted to the
death or such other
all be punished with
inty, salvage, prize

money, and allowances that have been earned by him and all annuities, pensions, gratuities, medals, and decorations that may have been granted to him, and also all clothes and effects which he may have left on board the ship or at the place from which he has deserted, unless the tribunal by which he is tried, or the Governor General in Council, shall otherwise direct.

20. Every person subject to this Act who shall endeavour to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

21. Every officer in command of any ship of His Majesty who shall receive or entertain any deserter from His Majesty's naval, military, or air forces, after discovering him to be a deserter

suffer such other punishment as is hereinafter mentioned

22. If any person subject to this Act (without being guilty of desertion) improperly leaves his ship or place of duty, he shall be liable to imprisonment for breaking out hereinafter by force to time

23 Every person subject to this Act who (without being guilty of desertion or of improperly leaving his ship or place of duty) shall be absent without leave shall be liable in time of war to imprisonment or such other punishment as is herein any period not of the case may r benefits as tho

24 If any person subject to this Act is absent without leave for a period of one

forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the use of the person to whom the clothes or effects belonged, or his representatives.

25 If any person not subject to this Act assists or procures any person subject to this Act to desert or improperly absent himself from his duty, or conceals, employs or continues to employ any person subject to this Act, who is a deserter or improperly absent from his duty, knowing him to be a deserter or so improperly absent, he shall for every such offence of assistance, procurable, on conviction liable, on conviction 260 of the Code of Court exercising like y not exceeding two e Governor General in

Council directs

26. If any
Penalty for
desertion, etc.

Magistrate empowered under section 260 of the

Magistrate empowered under section 260 of the

of Criminal Procedure, 1898, or before any person or persons or Court, exercising like authority in any part of His Majesty's Dominions, to a penalty not exceeding two hundred rupees, and every such penalty shall be applied as the Governor General in Council directs.

Miscellaneous Offences

27 Every person subject to this Act who shall be guilty of any profane oath, cursing, execration, drunkenness, uncleanness or other scandalous action in derogation of God's honour and corruption of good manners, shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Penalty for profane swearing and other immoralities

28 Every officer subject to this Act who shall be guilty of cruelty, or of any scandalous or fraudulent conduct, shall be dismissed with disgrace from His Majesty's service, and every officer subject to this Act who shall be guilty of any other conduct unbecoming the character of an officer shall be dismissed, with or without disgrace, from His Majesty's service.

Penalty of an officer for cruelty or oppression

29. Every person subject to this Act who shall either designedly or negligently or by any default lose, strand, or hazard or suffer to be lost, stranded, or hazarded, any ship of His Majesty or in His Majesty's service, or lose or suffer to be lost any aircraft of His Majesty or in His Majesty's service, shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Penalty for suffering ships or aircraft to be improperly lost.

30 The officers of all ships of His Majesty appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf, and every officer who shall fail in his duty in this respect, and shall not defend the ships and goods under his convoy, without deviation to any other objects, or shall refuse to fight in their defence if they are assailed, or shall cowardly abandon and expose money or other row entrusted to his care, shall be liable to reparation in damages, may adjudge, and by death or such

Penalty for not taking care of and defending ships under convoy

31 Every Master of a ship who shall disobey orders of the commanding officer, or shall refuse to obey orders directed by such commanding officer, shall be liable to loss of life or

Master of a ship who shall disobey orders of the commanding officer, or shall refuse to obey orders directed by such commanding officer

32 Every officer in command of any of His Majesty's ships who shall receive on board other than for the use of the vessel except gold, silver, jewels, etc

Penalty for taking any goods on board other than for the use of the vessel except gold, silver, jewels, etc

imminent danger, either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Governor General in Council or his superior officer, shall be dismissed from His Majesty's service, or suffer such other punishment as is hereinafter mentioned.

33 Every person subject to this Act who shall wastefully expend, embezzle, or fraudulently buy, sell, or dispose of public stores, or shall fail to do so, shall be liable to suffer imprisonment or such other punishment as is hereinafter mentioned.

Penalty for embezzling public stores

35 Every person subject to this Act who shall knowingly make or sign a false muster
Penalty for making or signing or record or other official document or who shall com,

36 Every person subject to this Act who shall wilfully do any act or wilfully disobey
any orders whether in hospital or elsewhere with
Penalty for misconduct in intent to produce or to aggravate any disease or infir
hospital mity, or to delay his cure or who shall feign any
disease infirmity or inability to perform his duty,
shall suffer imprisonment or such other punishment as is hereinafter mentioned

37 Every person subject to this Act who shall have any cause of complaint either of
the unwholesomeness of the victuals or upon any
other just ground shall quietly make the same known
Penalty for endeavouring to stir up any disturbance on ac
count of unwholesomeness of the victuals or other just
grounds to his superior or captain or to the Officer Commanding
the Indian Navy and the said superior captain or
officer, shall as far as he is able cause the same
to be presently remedied and no person subject to
this Act upon any pretence whatever shall attempt to
stir up any disturbance upon pain of such punishment as a court martial may think fit
to inflict, according to the degree of offence

38 All the papers charter parties bills of lading passports, and other writings what
soever that shall be taken seized or found aboard any
ship or ships which shall be taken as prize shall be duly
Penalty for not sending to the Court of Admiralty all papers
found aboard prize ships preserved and the commanding officer of the ship
which shall take such prize shall send the originals
entire and without fraud to the Court of Admiralty or such other court or commissioners
as shall be authorised to determine whether such prize be lawful capture there to be
viewed, made use of and proceeded upon according to law upon pain that every person
offending herein shall be dismissed from His Majesty's service or shall suffer such other
punishment as is hereinafter mentioned and in addition thereto shall forfeit and lose his
share of the capture

39 No person subject to this Act shall take out of any prize or ship seized for prize
any money plate or goods unless it shall be necessary
Penalty for taking money or other effects out of any prize
before the same shall be con demned for the better securing thereof or for the necessary use
and service of any of His Majesty's ships and vessels
of war before the same be adjudged lawful prize in some
Admiralty Court but the full and entire account of the
whole without embezzlement shall be brought in and judgment passed entirely upon
the whole without fraud upon pain that every person offending herein shall be dis
missed from His Majesty's service with disgrace or suffer such other punishment
as is hereinafter mentioned and in addition thereto forfeit and lose his share of the
capture

40 If any ship or vessel shall be taken as prize none of the officers mariners or
other persons on board her shall be stripped of their
Penalty for stripping or ill

Penalty on commanders cap
turing as prize by collusion or
collusively restoring ships or
goods

41 If the commanding officer of any of His
Majesty's ships does any of the following things
namely —

- (1) By collusion with the enemy takes as prize any vessel goods or thing
- (2) Unlawfully agrees with any person for the ransoming of any vessel goods or thing
taken as prize or
- (3) In pursuance of any unlawful agreement for ransoming or otherwise by
actually quits or r y vessel goods or thing taken as prize, he shall be

His Majesty's service, with disgrace, or to such other punishment as is hereinafter mentioned, and in addition thereto to forfeit and lose his share of the capture

44 Any person subject to this Act committing an offence under the provisions of this Act shall be liable to be punished according to the provisions of the laws and customs in use in the country to which he is subject, or to the laws and customs in such cases used at sea.

45. Every person subject to this Act shall be liable under the provisions of the Act for any offence punishable by ordinary law.

46. For all offences specified or referred to in this Act, if committed by any person subject thereto in any harbour, haven, or creek, or on any lake or river, whether in or out of British India, or anywhere within the jurisdiction of the admiralty, or at any place on shore out of British India, or in any of His Majesty's Dockyards, or on any vessel

[illegible]

46A (1) Where an offence under this Act has been committed by any person while Provisions where offender has ceased to be subject to the Act, subject to the Act such person may be taken into and kept in custody and tried and punished for such offence although he has ceased to be subject to this Act in like manner as he might have been taken into and kept in custody tried or punished if he had ceased to be subject to this Act.

(2) Where a person subject to the provisions of this Act is removed from His Majesty's service, or is imprisoned, or detention, notwithstanding that he is discharged from custody, he may be kept in custody removed, imprisoned, made to undergo detention and punished accordingly, as if he had continued to be subject to this Act.

PART II.

GENERAL PROVISIONS

47. Where the amount of punishment for any offence under this Act depends upon the intent with which it has been committed, and any person is charged with having committed such offence with an intent involving a greater degree of punishment, a court-martial may find that the offence was committed with an intent involving a less degree of punishment, and award such punishment accordingly.

48. Where any person shall be charged with any offence under this Act he may, upon failure of proof of the commission of the greater offence, be found guilty of another offence of the same class involving a less degree of punishment, but not of any offence involving a greater degree of punishment.

49. All armed rebels, armed mutineers, and pirates shall be deemed to be enemies within the meaning of this Act.

50. Every officer in command of a fleet or squadron of His Majesty's ships, or of one of His Majesty's ships, or the senior officer present at a port, or an officer having by virtue of sub section (3) of section fifty six of this Act power to try offences, may, by warrant under his hand, authorise any person to arrest any offender subject to this Act for any offence against this Act mentioned in such warrant, and any such warrant may include the names of more persons named in any s, be taken on and any person apprehensions, towards any person subject to this Act.

51. Every person subject to this Act who shall not use his utmost endeavours to detect, apprehend and bring to punishment all offenders against this Act, and shall not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned

PART III

REGULATIONS AS TO PUNISHMENTS

Punishments

52. The following punishment may be inflicted in His Majesty's Navy

- (1) Death.
- (2) Penal servitude
- (3) Dismissal with disgrace from His Majesty's service
- (4) Imprisonment or corporal punishment
- (4A) Detention
- (5) Dismissal from His Majesty's service
- (6) —
- (7) —
- (8) —
- (9) —

53. The following regulations are hereby made with respect to the infliction of punishments in His Majesty's Navy —

provisions of this Act) be valid, and shall be carried into execution, as if it had been originally passed with such modification, by the court martial but so that neither the degree nor the duration of the punishment involved in any sentence be increased by any such modification.

(4) The punishment of penal servitude may be inflicted for the term of life or for any other term of not less than three years.

(5) The punishment of penal servitude shall in all cases involve dismissal with disgrace from His Majesty's service.

naval air force, or civil service and may also in all cases be accompanied by a sentence of imprisonment.

(6) The punishment of imprisonment may be inflicted for any term not exceeding two years and may be accompanied with a sentence of dismissal from His Majesty's service.

(7) A sentence of imprisonment may be accompanied with a direction that the prisoner shall be kept in solitary confinement for any period of such term not exceeding fourteen days at any one time and not exceeding eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than the periods of solitary confinement and when the imprisonment awarded exceeds eighty-four days the solitary confinement shall not exceed seven days in any twenty-eight days of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

(8) A sentence of imprisonment may be rigorous or simple or partly rigorous and partly simple and corporal punishment may be awarded in addition to any sentence of imprisonment whether such imprisonment is or is not to be accompanied with solitary confinement and hard labour or either of them.

(9A) The punishment of detention may be inflicted for any term not exceeding two years.

Provided that until naval detention quarters shall have been set apart and declared to be such by the Governor-General in Council by notification in the Gazette of India no sentences of detention shall be awarded.

(10) The punishment of imprisonment or detention whether on board ship or on shore shall involve during in case of a petty officer and reduction to the ranks in case of a non-commissioned officer of marines and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment or detention.

Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentences may direct that the punishment shall not be accompanied by stoppage of pay or wages during the term of detention.

(11) In any case of corporal punishment not more than fifty-five lashes shall be inflicted no officer shall be subject to detention or to corporal punishment no petty or non-commissioned officer shall be subject to corporal punishment except in case of mutiny.

All other punishments authorised by this Act may be inflicted in the manner herebefore in use in the navy.

53A (1) Where a person other than a European or American is sentenced to penal servitude the authority sentencing him shall record the substitution of 'imprisonment' for 'penal servitude' in certain cases such sentence and the term thereof and at the same time shall record an order substituting for such sentence a sentence of transportation which may be for life or of

in the subject or punishment substituted

54 No person unless he be an offender who has avoided apprehension or fled from limitation of time for trial, justice shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial shall take place within three years from the commission of such offence or within one year after the return of such offender to India, where he has been absent from India during such period of three years.

55 Subject to the foregoing regulations where any punishment is specified by this Scale of punishment Act as the penalty for any offence and it is further declared that another punishment may be awarded in respect of the same offence the expression other punishment shall be deemed to comprise

1
3

Authorities having power to try offences 56 (1) Any offence triable under this Act may be tried and punished by court martial

(2) Any offence not capital which is triable under this Act and (except in the cases by this Act expressly provided for) is not committed by an officer may under such regulations as the Governor General in Council from time to time issues be summarily tried and punished by the officer in command of the ship to which the offender belongs at the time either of the commission or of the trial of the offence subject to the restriction that the commanding officer shall not have power to award penal servitude or to award

of a

the boat or boats and

(c) as respects persons subject to this Act on detached service either on shore or otherwise or such of those persons as are not for the time being made subject to military law by an order under section one hundred and seventy nine of the Army Act 1881 be exercised by the officer in immediate command of those persons and

(d) as respects persons subject to this Act quartered in naval barracks be exercised

be sentenced by the commanding officer to been inquired into by one or more officers or their opinion as to the guilt or innocence of the offender by the commanding officer and the commanding judgment may seem right

57 The Governor General in Council may impose the punishment of forfeiture of time or seniority or seniority of not more than twelve months on any subordinate officer

57A (1) Where any officer borne on the books of any of His Majesty's ships in commission is in time of war alleged to have been guilty of a disciplinary offence that is to say a breach of section seventeen eighteen nineteen twenty two twenty three twenty seven or forty three of this Act the officer having power to order a court martial may if he considers that the offence is of such a character as not to necessitate trial by court martial, in lieu of ordering a court martial order a disciplinary court constituted as hereinafter mentioned

(2) A disciplinary court shall be composed of not less than three nor more than five officers of whom one shall be commander or of higher rank.

(3) A disciplinary court shall have power to impose any punishment inferior to detention in the scale hereinbefore contained but no greater punishment

(4) The Governor General in Council may from time to time frame general orders for

PART IV

COURTS MARTIAL

Constitution of Courts Martial

Constitution of courts martial 58 The following regulations are hereby made with respect to courts martial —

(1) A court martial shall not less than five nor more than nine officers

(2) No officer shall be qualified to sit as a member of any court martial held in pursuance of this Act unless he be a flag officer, captain, commander, lieutenant commander or lieutenant of His Majesty's navy on full pay.

(3) A court martial shall not be held unless, at least two of His Majesty's ships not being tenders and commanded by captains, commanders, lieutenant commanders or lieutenants of His Majesty's navy on full pay, are together at the time when such court martial is held.

and unless the rank of

shall be duly constituted unless the president is a captain or of higher rank, and the other officers composing the court are commanders or officers of higher rank.

(7) No court martial for the trial of a person below the rank of captain in His Majesty's navy shall be duly constituted unless the president is a captain or of higher rank nor if the person to be tried is of the rank of commander, unless in addition to the president two other members of the court are of the rank of commander or of higher rank.

(8) The prosecutor shall not sit on any court martial for the trial of a person whom he prosecutes.

(9) The Governor General in Council shall have power to order courts martial to be held for the trial of offences under this Act and to grant commissions to any officer of His Majesty's navy on full pay authorising him to order courts martial to be held for the

order such

command of one or more of His Majesty's ships or vessels, although such last mentioned officer may not hold a commission to order courts martial, and in such a case such last mentioned officer may order a court martial, although he does not hold any

from the Governor General in Council to fleet or squadron, and being in foreign or be removed from his command, the officer upon whom the command of the fleet or squadron devolves and so from time to time the officer who shall have the command of the fleet or squadron, shall, without any commission from the Governor General in Council have the same power to order courts martial as the first mentioned officer was invested with.

(12) If any officer holding a commission from the Governor General in Council to

himself hand

detachment shall belong to His Majesty's ships on the

detachment, or division holding it ceasing to time as often as the case

so requires

for ordering

required to sit prior to the

or of the proceedings thereof, shall not be commander or lieutenant being required to sit (but the or sitting thereon under any circumstances), and when any commander, lieutenant-commander or lieutenant sits on any court martial the members of it shall not exceed five in number.

(16) Subject to the foregoing regulations, whenever a court martial shall be held the officer appointed to preside thereat shall summon all the officers next in seniority to himself present at the place where the court martial shall be held to sit thereon until

the number of nine or such number not less than five as is attainable, is complete subject to this proviso that the admirals and captain being superintendents of His Majesty's dockyards shall not be summoned to sit on courts martial unless specially directed to do so by orders from the Governor General in Council

Proceedings of Courts Martial

59 A court martial under this Act shall be held on board one of His Majesty's ships or vessels of war unless the Governor General in Council or the officer who ordered the court martial in any particular case for reasons to be recorded on the proceedings otherwise direct in which case the court martial shall be held at a port at such convenient place on shore as the Governor General in Council or the officer who ordered the court martial shall direct

60 A court martial held in pursuance of this Act may if it appears to the court that an adjournment is desirable be adjourned for a period not exceeding six days but except where such an adjournment is ordered shall sit from day to day with the exception of Sundays until sentence is given unless prevented from so doing by stress of weather or unavoidable accident and its proceedings shall not be delayed by the absence of any member so that not less than four are present and no member shall absent himself unless compelled so to do by sickness or other just cause to be approved of by the other members of the Court and if any member of a court martial shall absent himself therefrom in contravention of this section he shall be dismissed from His Majesty's service or shall suffer such other punishment as may be awarded by a court martial

61 In the absence of the judge advocate of any appointment of officiating General in Council the Indian Navy judge advocate of the court martial shall appoint a person to officiate as deputy judge advocate at the trial and the judge advocate of the fleet for the time being or his deputy, or the person officiating as deputy judge advocate at any trial shall administer an oath to every witness appearing at the trial

62 As soon as the court is assembled, the names of the officers composing the court shall be read over to the person charged who shall be asked if he objects to being tried by any member of the court if the person charged shall object to any member the objection shall be decided by the court if the objection shall be allowed the place of the member objected to shall be filled up by the officer next in seniority who is not on the court martial subject to the regulations hereinbefore contained

The person charged may then raise any other objection which he desires to make respecting the constitution of the court martial and the objection shall then be decided by the court which decision shall be final and the constitution of the court martial shall not be afterwards impeached and it shall be deemed to have been in all respects duly constituted

63 Before the court shall proceed to try the person charged the judge advocate of the fleet, or his deputy, or the person officiating as deputy judge advocate of the fleet shall administer to every member of the court the following oath that is to say

I do swear that I will duly administer justice according to law without partiality favour or affection and I do further swear that I will not on any account, at any time whatsoever disclose or discover the vote or opinion of any particular member of this court martial unless thereunto required in due course of law

So help me God

Provided that an affirmation to the same effect in such terms as the Governor General in Council may prescribe in this behalf may be substituted for such oath

64 As soon as the said oath shall be administered to the members of the court Oath to be administered to judge advocate etc martial the president shall administer to the judge advocate of the fleet or his deputy or the person officiating as deputy judge advocate the following oath

I do swear, that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of the court martial unless thereunto required in due course of law

So help me God

Provided that an affirmation to the same effect in such terms as the Governor General in Council may prescribe in this behalf may be substituted for such oath

69A A Navy - by authority and either to
 Evidence of ran printer or to be issued by
 officers Office shall be evidence of
 and of any appointment held by such officers until the
 contrary is proved

PART V

PENAL SERVITUDE AND PRISONS

Penal Servitude

70 Where a person in pursuance of this Act is convicted by a court martial and
 either is sentenced or has his sentence commuted to
 Sentence of penal servitude penal servitude such conviction and sentence shall be

place of confinement

72 In case any such offender shall be conveyed to any prison not being a naval
 prison appointed by virtue of this Act an allowance
 Subsistence of offender such as the Governor General in Council shall from time
 to time direct shall be made to the governor keeper or
 superintendent of the gaol or prison for the subsistence of such offender while he is
 detained therein and such allowance shall be paid by order of the Governor General in
 Council upon production by the said governor keeper or superintendent of a declaration
 to be made by him before a Magistrate of the number of days during which the offender
 has been so detained and subsisted in such gaol or prison

73 Whenever sentence shall be passed by a court martial on an offender already
 under sentence either of detention imprisonment or
 Imprisonment of offender penal servitude, passed upon him under this Act for a
 already under sentence for former offence the court may award sentence of detention
 previous offence imprisonment or penal servitude for the offence for which
 he is under trial to commence at the expiration of the
 detention imprisonment or penal servitude to which he has been previously sentenced
 it or penal servitude may
 otherwise awarded
 undergo imprisonment or
 utive years and so much
 by a sentence in pursuance
 of this section as would prolong the total term of his punishment beyond that period shall
 be deemed to be remitted

Prisons

74 (1) Every term of penal servitude imprisonment or detention in pursuance of
 this Act shall be reckoned as commencing on the day
 Term and place of imprisonment on which the sentence was awarded and the place of
 imprisonment or detention whether the imprisonment
 or detention was awarded as an original or as a com-
 be appointed by the court or the command-
 may from time to time be appointed by
 the case of imprisonment be one of the
 naval detention quarters or any common
 detention barrack and may in the case
 r military detention barrack within His

Majesty's dominions

(2) Where by reason of a ship being at sea or off a place at which there is no proper
 prison or naval detention quarters a sentence of imprisonment or detention as the case
 may be, cannot be duly executed then subject as hereinafter mentioned an offender

with all reasonable
arters, or in the

and sentence
of

74A Where a person has been sentenced to penal servitude or imprisonment or
Power to suspend sentences detention the Governor General in Council or officer
of this Act h of section seventy four
as the com this section referred to
sentence be s order order that the
an order of committal is issued and in such case—

(a) Notwithstanding anything in this Act the term of the sentence shall not be

months
officer
scribe
ncil or
conviction has
in Council or

(d) Where a person subject to this Act whilst a sentence on him is so suspended
is sentenced to penal servitude or imprisonment or detention for any other offence then
led sentence or under any such
subsequent sentence has also been
two sentences shall run either

and
it ng
may
the
o
l
s

1b Whenever it is deemed expedient it shall be lawful for the Governor General in
Place of imprisonment in a gaol (other than a gaol of the Indian Navy or
ch in writing from
off finement of any
of o of this Act or
of gaol or other

person having the custody of such offender shall immediately on the receipt of such order remove such offender to the gaol, prison, or house of correction or in the case of an

quarters shall upon being furnished with a copy of such order of removal attested by a Secretary to the Government of India for the time being receive into his custody and shall confine pursuant to such sentence or order every such offender

76 The gaoler or other person removing any offender in pursuance of such order shall be allowed for the charges of such removal a sum not exceeding twelve annas a mile, and when any offender
Expenses of removal of sub
sistence of prisoners

jurisdiction such gaol, prison or house of correction shall be situate with the copy of the sentence or order under which the offender is confined

78 Whenever any offender is undergoing imprisonment or detention in pursuance of this Act it shall be lawful for the Governor General in Council or where an offender is undergoing imprisonment or detention by order of his commanding officer
Proviso for discharge or re
moval of prisoners

79 The time during which any offender under sentence of imprisonment or detention is detained in naval custody shall be reckoned as imprisonment or detention under his sentence for whatever purpose he is so detained and the governor gaoler keeper or superintendent who shall deliver over any such offender shall again receive him from naval custody, so that he may undergo the remainder of his punishment
Proviso as to time of detention
in naval custody

80 If any person imprisoned or undergoing detention by virtue of this Act shall become insane and a certificate to that effect shall be given by two physicians or surgeons the Governor General in Council shall, by warrant direct the removal of such person to such lunatic asylum or other proper
In case of insanity prisoners to
be removed to some lunatic asy
lum

81 (1) The Governor General in Council may set apart any buildings or vessels or any

(2) The Governor General in Council shall have the same power and authority in respect to naval prisons and naval detention quarters respectively as one of His Majesty's Principal Secretaries of State has in relation to military prisons and detention barracks

confine pursuant to such sentence or order every such offender.

76. The gaoler or other person removing any offender in pursuance of such order shall be allowed for the charges of such removal a sum not exceeding twelve annas a mile, and when any offender is not confined in a naval prison or naval detention house shall receive time direct for subsistence and authority of the Governor within whose jurisdiction the copy of the

78. Whenever any offender is undergoing imprisonment or detention in pursuance of this Act, it shall be lawful for the Governor General in Council or where an offender is undergoing imprisonment or detention by order of his commanding officer, to send any offender to any place or places and to return him to any place or places.

79. Proviso in naval keeper, or superintendent who shall deliver over any such offender shall again receive him from naval custody, so that he may undergo the remainder of his punishment

80. If any person imprisoned or undergoing detention by virtue of this Act shall become insane, and a certificate to that effect shall be given by two physicians or surgeons the Governor-General may order that the person shall be removed to some lunatic asylum.

(2) The Governor General in Council shall have the same power and authority in respect to the management of the naval prisons and detention houses as the Governor-General has in respect to the management of the prisons and detention houses of the Government of India, and the same power and authority as the Governor-General has in respect to the management of the prisons and detention houses of the Government of India, and the same power and authority as the Governor-General has in respect to the management of the prisons and detention houses of the Government of India.

82 If any person shall convey or cause to be conveyed any such naval instruments or articles, or attempt to escape of prisoners and on breach of prison regulations

to escape from such prison or person undergoing

such prison or naval detention quarters, in fermented liquor he shall for every such offence be liable to a fine of not less than one hundred

to or for any prisoner or person undergoing detention, or shall throw into any such prison or naval detention quarters any such articles or by desire of any prisoner or person undergoing detention

of the prison or naval detention quarters such offence be liable to a penalty of not less than one hundred rupees or to imprisonment for any term not exceeding three months or to any combination of such penalties, and every officer or person in charge of any such prison or naval detention quarters who shall aid or excite any person to commit any such offence shall be liable to a penalty of not less than one hundred rupees or to imprisonment for any term not exceeding three months or to any combination of such penalties, in addition to so much of the punishment to which he may be liable as he may then be entitled to receive, and every such officer shall direct, any law, statute or regulation

83 Every governor, officer, and keeper of any prison, gaol or house of correction or of any naval detention quarters and every officer having the charge or command of any place, ship or vessel for imprisonment who shall, without lawful excuse, refuse or neglect to receive or detain any prisoner or person undergoing detention

PART VI SUPPLEMENTAL PROVISIONS.

Short title

84 This Act may be cited for all purposes as the Naval Discipline Act

85 Except as otherwise provided, this Act shall be in force within the United Kingdom, and as regards the United Kingdom the enactments described in the Schedule to this Act shall be repealed from and after the first day of January, 1932

86 In the construction of this Act, unless there be something in the context or manifestly inconsistent with such construction

Lord High Admiral for the time being and when there shall be two or more of the Commissioners for the

executing the office of Lord High Admiral of the United Kingdom, any two or more of the Commissioners for the time being shall mean an officer

officers, warrant officers petty and non commissioned officers

87. Every person in or belonging to His Majesty's Navy, and borne on the books of any one of His Majesty's ships in commission and every member of the Indian Naval Volunteer Reserve during

ther for training or
a member of such
hereby or by any
provisions of this
Act

88 His Majesty's land and air forces when embarked on board any of His Majesty's ships shall be subject to the provisions of this Act to such extent and under such regulations as His Majesty His heirs and successors by any Order or Orders in Council shall at any time or times direct

89 All other persons ordered to be received or being passengers on board any of His Majesty's ships shall be deemed to be persons subject to this Act under such regulations as the Governor General in Council may from time to time direct

90 With respect to vessels in His Majesty's service in time of war whether belonging to His Majesty or not which are not wholly manned by naval ratings but being either armed or under the command of an officer in His Majesty's naval service the following provisions shall take effect if in any case the Governor General in Council thinks fit so to direct and where such direction is given the same shall be specified in the ship's articles

(1) Where an officer or non-commissioned officer not below the rank of sergeant is a member of a body of His Majesty's military forces acting with or is attached to any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers he shall in relation to such body of His Majesty's naval forces as aforesaid be treated and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer as the case may be

absent of the officer commanding such vessel the officer commanding the ship or vessel or station in which such person may for the time being be held in custody shall

90A (1) Where an officer or non-commissioned officer not below the rank of sergeant is a member of a body of His Majesty's military forces acting with or is attached to any body of His Majesty's naval forces under such conditions as may be prescribed by regulations made by the Admiralty and Army Council then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers he shall in relation to such body of His Majesty's naval forces as aforesaid be treated and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer as the case may be

(1A) Where an officer or non-commissioned officer not below the rank of sergeant, His Majesty's as made by the not borne on es of command ing to superior aforesaid, be ment) as if he

His Majesty's naval s and r such conditions as may be prescribed by regulations made by the Admiralty and Army Council, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers, not

below the rank of sergeant of such military body shall in relation to him be treated and may exercise all such powers (other than powers of punishment) as if they were naval officers and petty officers

(24) Where any naval officer or seaman is a member of a body of His Majesty's naval forces acting with any body of His Majesty's air force under such conditions as may be prescribed by regulations made by the Admiralty and Air Council then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to super or officers the officers and non-commissioned officers, not below the rank of sergeant of such body of the air force shall in relation to him be treated and may exercise all such powers (other than powers of punishment) as if they were naval officers and petty officers

(3) The relative rank of naval and military and air force officers, petty officers and non-commissioned officers shall for the purposes of this section be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force

90B. (1) Any person in or belonging to His Majesty's Navy and any officer or man of the Royal Marines who by order of the Admiralty or of the Commander-in-Chief or the Senior Naval Officer present on a foreign station is serving in a ship of or belonging to the naval forces of a self-governing Dominion or of India (provided such ship is not at the time placed at the disposal of the Admiralty) or in a naval establishment of a self-governing Dominion or of India or who is on board such ship or in such establishment as aforesaid awaiting passage or conveyance to any destination shall for all purposes of command and discipline be subject to the laws and customs for the time being applicable to the ships and naval forces of such self-governing Dominion or of India

(2) For the purposes of this section the expression self-governing Dominion includes the Dominion of Canada the Commonwealth of Australia the Dominion of New Zealand the Union of South Africa, and Newfoundland

90C. (1) Any person in or belonging to the Indian Navy who by order of the Governor General in Council is serving in a ship of the Royal or Dominion Navy to be subject to the laws and customs thereof

Persons serving in a ship of the Royal or Dominion Navy to be subject to the laws and customs thereof

(2) For the purposes of this section the expression self-governing Dominion includes the Dominion of Canada the Commonwealth of Australia, the Dominion of New Zealand the Union of South Africa and Newfoundland

91 When any one of His Majesty's ships shall be wrecked or lost or destroyed or taken by the enemy such ship shall for the purposes of this Act be deemed to remain in commission until her crew shall be regularly removed into some other ship or until a court martial shall have been held pursuant to the custom of the Navy in such cases to inquire into the cause of the wreck loss destruction or capture of the said ship

92 When no specific charge shall be made against any officer or seaman or other person in the fleet for or in respect of or in consequence of such wreck loss destruction or capture it shall be lawful to try all the officers and crew or all the crew of such ship together in when upon their trial any of the matters then be obliged to give any evidence on oath or under inquiry but no evidence which may tend to criminate himself

93 When deemed necessary by the Governor General in Council or any officer authorised to order court martial separate courts martial shall be held for the trial of some one or more of such officers and crew for or in respect of or in consequence of the wreck loss destruction, or capture of any such ship

94 For any offence or offence committed by any officer or seaman or officers and seamen after the wreck loss destruction or capture of any such ship a separate court martial shall be held for the trial of such offender or offenders

95 When any ship of His Majesty shall be wrecked lost or otherwise destroyed or taken by the enemy if it shall appear by the sentence of a court martial that the crew of such ship did in the case of a ship wrecked or lost do their utmost to save her or get her off and in the case of a ship taken by the enemy did their utmost to defend themselves, and that they have since the wreck, destruction loss or capture of such ship behaved themselves well and been obedient to their officers then all the pay of such crews or of such portions of such crews as have behaved themselves well and been obedient to their officers shall be continued until the time of their being discharged or removed into other ships of His Majesty or dying

96 If a ship of His Majesty shall be wrecked lost or otherwise destroyed was or were under his command and it was of the wrecked ship or of the crew thereof the officer shall until the time of their being discharged or removed into other ships of His Majesty or dying distribute them as he may think fit and authority in

97 It shall not be lawful for any person to arrest any petty officer or seaman non commissioned officer of marines or marine belonging to any ship of His Majesty by any warrant process or writ issued in any part of His Majesty's Dominions for any debt, unless the debt was contracted at a time when the debtor did not belong to His Majesty's service, nor unless before the issuing of the warrant process or writ the debtor was out of the service of His Majesty (s) was unless writ

98 If any petty officer or seaman non commissioned officer of marines or marine is arrested in contravention of the provisions of the last foregoing section the court out of which the warrant, process or writ issues or any judge thereof may on complaint by the party arrested or by his superior officer investigate the case on oath or otherwise and if satisfied that the arrest was made in contravention of the provisions of the last foregoing section the party arrested without being taxed by the proper authorities shall be liable to pay the costs of the proceedings in the suit

98A (1) A person subject to this Act shall be liable to contribute to the maintenance of his wife and of his children legitimate or illegitimate, to the same extent as if he were not so subject but execution in respect of any such liability or of any decree or order in respect of such maintenance shall not issue against his person pay arms ammunition equipments instruments or clothing

(2) Where—

(a) it appears to the satisfaction of the Governor General in Council or any person deputed by him for the purpose that a person subject to this Act has deserted or left in destitute circumstances without reasonable cause his wife or any of his legitimate children under fourteen years of age or

(b) any decree or order is made under

the Governor General in Council or the person so deputed may direct to be deducted from the pay of the person so subject to this Act and to be appropriated towards the maintenance of his wife or children or in liquidation of the sum adjudged to be paid by the Governor General in Council or any person deputed by him for the purpose at his discretion, by the decree or order (if made in this behalf by

if a sum adjudged

paid by a decree or order as aforesaid shall be ordered unless the Governor General

Council or the person deputed by him is satisfied that the persons against whom the
 himself or has
 the Court by
 rtificate of the
 ls of which he
 was or is borne that the person has been prevented by the requirements of the service
 from attending at a hearing of any such case shall be evidence of the fact unless the
 contrary is proved

Where any arrears have accumulated in respect of sums adjudged to be paid by any
 such decree or order as aforesaid whilst the person against whom the decree or order was
 made was serving under this Act whether or not deductions in respect thereof have been
 made from his pay under this section then after he has ceased so to serve an order of
 committal shall not be made in respect of those arrears unless the court is satisfied that
 he is able, or has since he has ceased so to serve been able to pay the arrears or any
 part thereof and has failed to do so

served unless the contrary is proved

Where by a decree or order sent to the Governor General in Council or officer in
 and a certificate in the case of

(4) This section shall not apply to persons subject to this Act where such persons
 are officers

(5) In this section the expression 'pay' includes all sums payable to a man in respect
 of his services other than allowances in lieu of lodgings rations provisions and clothing

PART VII SAVING CLAUSE

100 Nothing in this Act shall

Nothing to take away preroga
 tive of the Crown or rights or
 powers of Admiralty

right or power of the Admiralty

101 Nothing in this Act contained shall be deemed or taken to supersede or affect the

Act not to supersede authority
 of ordinary courts

authority or power of any Court or tribunal of ordinary
 civil or criminal jurisdiction or any officer thereof in
 His Majesty's Dominions in respect of any offence
 mentioned in this Act which may be punishable or
 cognizable by the common or statute law or to prevent any person being proceeded against
 and punished in respect of any such offence otherwise than under this Act

PART VIII

PRINTING CLAUSE

102 (1) Every enactment ar

Printing and construction of
Naval Discipline Actthis Act
this Act
signed it
ts which
at of the
iginally enacted

ALL SHALL DO

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ding
by
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areaval
to

THE SCHEDULES

Enactments repealed

11 Geo 4 & 1 Will 4 c 20 in part	An Act to amend and consolidate the laws relating to the pay of the Royal Navy	} in part namely —
	Section eighty	
10 & 11 Vict c 62 in part	An Act for the establishment of naval prisons and for the pre- vention of desertion from Her Majesty's Navy	} in part namely —
	Section eleven	
27 & 28 Vict c 119	The Naval Discipline Act 1864	
29 & 29 Vict c 115	The Naval Discipline Act Amendment Act 1865	

THE SECOND SCHEDULE

[Repealed by Act I of 1938]

THE INDIAN OATHS ACT (X OF 1873)

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THE INDIAN OATHS ACT.

(ACT X OF 1873.)

(Received the Governor General's assent on the 8th April, 1873)

An Act to consolidate the law relating to judicial oath and for other purposes

WHEREAS, it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations and to repeal the law relating to official oaths, affirmations, and declarations, It is hereby enacted as follows—

Preamble

I—Preliminary

Short title

1 This Act may be called "The [Indian]* Oaths Act, [1873]*,"

[It extends to the whole of British India, and, so far as regards 'British subjects,'† to the territories of Native Princes and States in alliance with Her Majesty]‡

Local extent

it is
 sub
 admissible under the Evidence Act the fact of a special oath will not make it admissible
 90 Ind Cas 378

2 [Repeal of enactments] *Repealed by Act XII of 1873*

3 Nothing herein contained applies to proceedings before Courts-martial or to oaths, affirmations, or declarations prescribed "by or under any instruction under the Royal Sign Manual of His Majesty or § by any law which, [no legislature or authority in British India has power to repeal]||

II—Authority to administer Oaths and Affirmations

4 The following Courts and persons are authorised to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties

Authority to administer oaths and affirmations

* In Burma the words or figures within brackets have been omitted by G O Order of 1937

† Substituted by G I Order of 1937

to all British subjects

‡ 1910
 India by G I Order of 1910 has power to repeal

or in exercise of the powers imposed or conferred upon them respectively by law —

(a) All Courts and persons having by law or consent of parties authority to receive evidence

(b) The Commanding Officer of any military, "naval * or air force † station or ship ‡ occupied by troops in the service of Her Majesty

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in [British India] ‡

Notes—Oath can be administered in a proceeding under s 164 of the Cr Procedure Code 16 M 421 29 M 89 8 Bom L R 589 10 C P L R Cr 16 (but see 2 P R 1893 Cr) So also in an enquiry under s 122 of the Criminal Procedure Code 20 A 3 1 A W N (1903) 36 An oath can also be administered in a proceeding under s 100 of Cr Procedure Code 36 Ind Cas 171 But oath cannot be administered in non judicial enquiry 35 Ind Cas 672—11 B H C R 11

III—Persons by whom oaths or affirmations must be made

Oaths or affirmations to be made by— **5** Oaths or affirmations shall be made by the following persons —

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence,

interpreters

(b) interpreters of questions put to, and evidence given by, witnesses and

jurors

(c) jurors

Nothing herein contained shall render it lawful to administer, in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties

Child—Oath should be administered even to a child but where no oath has been administered the evidence is not inadmissible 31 P R 1889 8 C 212 Oudh 15 M 105 (Ier Parl er J) 23 Ind Cas 737 31 Cr L J 114 In every case where a witness is a competent witness under s 118 of the Evidence Act oath should be administered 61 Ind Cas 735 41 C 406

Interpreters—The only effect of the omission of the interpreters to take the oath was to render it necessary for the prosecuton to prove that the interpretation was correctly made 13 C W N 94—9 C L J 630

Affirmation by natives or by persons objecting to oaths **6** Where the witness, interpreter, or juror is a Hindu or Muhammadan,

or has an objection to making an oath,
he shall, instead of making an oath, make an affirmation
In every other case, the witness, interpreter, or juror shall make an oath

* Inserted by Act X of 19 7

† Inserted by Act 35 of 1934

‡ In Burma for these words read British Burma vide G B Order of 1937

SECTION

- 8 Power of Courts to tender certain oaths
 9 Court may ask party or witness whether he will make oath proposed by opposite party
 10 Administration of oath if accepted
 11 Evidence conclusive as against person affirming to be bound
 12 Procedure in case of refusal to make oath

SECTION

- V—MISCELLANEOUS
 13 Proceedings and evidence not invalidated by omission of oath or irregularity
 14 Person giving evidence bound to state truth
 15 Amendment of Penal Code sections 178 and 181
 16 Official oaths abolished
 SCHEDULE—(*Repealed*)

THE INDIAN OATHS ACT.

(ACT X OF 1873.)

(Received the Governor General's assent on the 8th April, 1873)

An Act to consolidate the law relating to judicial oath and for other purposes

WHEREAS, it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations and to repeal the law relating to official oaths, affirmations, and declarations, It is hereby enacted as follows—

Preamble

I—Preliminary

Short title

1 This Act may be called "The [Indian]* Oaths Act, [1873]*,"

[It extends to the whole of British India, and, so far as regards 'British subjects,'† to the territories of Native Princes and States in alliance with Her Majesty]‡

Local extent

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 add
 90 Ind Cvs 378

2 [Repeal of enactments] *Repealed by Act XII of 1873*

3 Nothing herein contained applies to proceedings before Courts-martial or to oaths, affirmations, or declarations, prescribed "by or under any instruction under the Royal Sign Manual of His Majesty or § by any law which, [no legislature or authority in British India has power to repeal]||

Saving of certain oaths and affirmations

II—Authority to administer Oaths and Affirmations

4 The following Courts and persons are authorised to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties

Authority to administer oaths and affirmations

* In Burma the words or figures within brackets have been omitted by G B Order of 1937

† Substituted by G I Order of 1937

to all British subjects

of 1919
 ‡ Ind a by G I Order of
 1937 has power to repeal

or in exercise of the powers imposed or conferred upon them respectively by law —

(a) All Courts and persons having by law or consent of parties, authority to receive evidence

(b) The Commanding Officer of any military, "naval * ' or air force * station or ship † occupied by troops in the service of Her Majesty

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in [British India] ‡

Notes—Oath can be administered in a proceeding under s 164 of the Cr Procedure Code 16 M 421 99 M 89 8 Bom L R 589 10 C P L R Cr 16 (but see 2 P R 1893 Cr) So also in an enquiry under s 122 of the Criminal Procedure Code 20 A 371 1 W N (1903) 36 An oath can also be administered in a proceeding under s 100 of Cr Procedure Code 86 Ind Cas 171 But oath cannot be administered in non judicial enquiry 35 Ind Cas 672—11 B H C R 11

III—Persons by whom oaths or affirmations must be made

Oaths or affirmations to be made by— 5 Oaths or affirmations shall be made by the following persons —

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence,

interpreters (b) interpreters of questions put to, and evidence given by, witnesses and

jurors (c) jurors

Nothing herein contained shall render it lawful to administer, in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties

Child—Oath should be administered even to a child but where no oath has been administered the evidence is not inadmissible 31 P R 1889 8 C 212 Oudh 15 M 105 (Ier Parker J) 22 Ind Cas 737 31 Cr L J 114 In every case where a witness is a competent witness under s 118 of the Evidence Act oath should be administered 61 Ind Cas 735 41 C 406

Interpreters—The only effect of the omission of the interpreters to take the oath was to render it necessary for the prosecution to prove that the interpretation was correctly made 13 C W N 94—9 C L J 690

Affirmation by natives or by persons objecting to oaths 6 Where the witness, interpreter, or juror is a Hindu or Muhammadan,

or has an objection to making an oath,
he shall, instead of making an oath, make an affirmation
In every other case the witness, interpreter, or juror shall make an oath

* Inserted by Act X of 1907

† Inserted by Act 35 of 1934

‡ In Burma for these words read British Burma vide G B Order of

Accused—An accused is not competent witness against his accused 22 C W N 405=C 720, see also A I R 1932 Rang 190

Notes—Witness, interpreters or jurors who are Hindus or Muhammadans are exempt from taking oath 20 P R 1902 Cr In every other case it is imperative that oath should be administered 9 L B R 88, 11 A 183 When a witness is neither affirmed nor sworn even then he can be convicted for giving false evidence 19 C 355 Where there is failure of justice A I R 1932
 . child though of tender years is capable of it is obligatory on it to administer oath
 156 Ind Crs 849=86 Cr L J 1013

IV.—Forms of Oaths and Affirmations

7 All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may, from time to time, prescribe

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use *

8 If any party to, witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him

Secs.—8, 9, 10, 11

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race or persuasion to which the deponent belongs and not repugnant to justice and decency 54 A 301 31 C W N 1053=1927 P C 165 This section is not applicable where parties are not willing to be bound by special oath 52 B 195

Court—A Local Commissioner is not a Court 3 Ind Cas 621 89 P R 1909 Arbitrators are also not Courts 4 A 283

Affecting third party—Oath repugnant to decency and affecting third person is not valid 7 Ind Cas 479 but see 18 A 46 22 M 234 5 P R 1903 85 P R 1903 A Court cannot decree a suit when the plaintiff offers to bind himself by the oath of a witness but who refuses to take oath 81 P R 1888

Withdrawal—Is not ordinarily allowed 29 A 49 22 B 281, 16 Ind Cas 733 18 A 46 22 M 234 but see A I R 1933 All 184 An agreement that failure to take oath will decide the suit is not valid 31 M 1

9 If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in such proceeding the Court may ask party or witness whether he will make oath proposed by opposite party

* The explanation to s 7, being repealed by the Lower Burma Courts Act (VI of 1900) Sch II is here omitted

Court may, if it thinks fit ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question

Party—A duly authorised agent holding a special power of attorney from a party to a suit enabling him to conduct a suit in a manner he may deem fit can make an offer under this section 38 A 141 see also A I R 1932 Lah 464 A I R 1931 Oudh 350 So also a pleader specially authorised can make an offer 14 B 455 P R 720 1874 P J (1890) 23 1923 All 65 But where there is no special authority such offer cannot be made 75 P R 1900 An attorney can make such an offer 85 P R 1903 Party includes authorised agent A I R 1931 Oudh 350 5 O W N 1010 34 C W N 310 Pleaders or agents should not offer special oath in absence of parties or express written authority A I R 1938 Nag 64

Minor—The next friend of a minor plaintiff can make such an offer P R 18 of 1891 (F B) So also the guardian of a minor defendant can 12 M 483 12 M 303, 27 C 229 21 A 25 19 A A L J 911

Estoppel—A refusal to take an oath does not make an estoppel P J 1897 p 73 But the Court can draw its own inference 31 M 1 But where both parties refuse no inference should be drawn 7 N L R 50

Retraction—Before taking the oath is not allowed 1896 P J 347 This section does not allow a party to retract after the opponent has accepted the proposal 49 A 389= 1917 All 590 A party offering to be bound by oath of the other party is entitled to revoke at any time before the statement on oath is taken and it is not necessary that the Court should be satisfied that the party has good reason for resiling 1935 P L J 212= A I R 1935 All 276=153 Ind Cas 696 If the party who agrees to be bound prevents the oath from being taken the other party is entitled to have it decreed in his favour 17 M L J 92 Where agreement proves abortive the Court can proceed on evidence already taken 36 Ind Cas 1001 Offer in a proceeding under s 144 Cr Pro Code is not binding in a subsequent civil suit 33 C 386 See also 5 M 259 13 M L T 261

Swearing with Ganges water in hand is sufficient compliance where the other party demands that 6 B L J 214 see also L R 5 A 147 (Rev) 1921 A 126

A W N 1835 188

the Court has no power
Lah 78 see also A I R
or oath under Oaths Act
401 Special oath may be

administered only when initiating comes from parties 36 C W N 786 There is nothing in law to prevent the parties to a suit from agreeing apart altogether from the Oaths Act to abide by the statement of the third person 171 Ind Cas 697=1937 A L J 1066 =A I R 1937 All 701

10 If such party or witness agrees to make such oath or

Administration of oath if affirmations, the Court may proceed to administer it or if it is of such a nature that it may be more conveniently made out of Court the Court may issue a commission to any person to administer it and authorise him to take the evidence of the person to be sworn or affirmed, and return it to the Court

299 35 C W N 130

Evidence conclusive as against person offering to be bound

11 The evidence so given shall, as against the person who offered to be bound as aforesaid be conclusive proof of the matter stated

Scope—The evidence so given is conclusive against the party who offered to be bound by the oath 7 C 1 L R 122 49 Ind Cas 1005, 45 Ind Cas 230 But it does in any way compel the Court trying the case to accept that evidence as conclus-

141, 26 Bom L R 713=82 Ind Cas 359 92 Ind Cas 813 The expression conclusive proof is to be interpreted in the sense in which it is used in the Indian Evidence Act 6 Bom L R 19 Evidence under this section is conclusive proof of the matter 77 This section is not applicable 22 W R 337 This section 729 Party's refusal to take 32 Lah 25

Appeal — Vide 18 A 386

Time — When the oath was taken not at the appointed time but later, the onus lies on the person who relies on the oath to prove that the time is not the essence of the contract 62 Ind Cas 619

Variation in the form of the oath originally proposed when accepted by the other party is not allowed 12 M L T 613

Form — Evidence to be conclusive must be taken in the form suggested by the other party 1885 A W N 188 In cases where the special oath or solemn affirmation is permitted by ss 8 9 and 10 of the Indian Oaths Act it is not necessary to administer in addition the ordinary oath or affirmation referred to in s 5 51 I A 301=81 O W N 1053=A I R 1927 P C 165

For the application of this section it is necessary that the statement given by a referee should amount to evidence of the fact in controversy between the parties 103 Ind Cas 348=A I R 1927 All 676 Where a party to a suit undertakes to abide by the oath taken by particular person and that person merely takes the oath he cannot afterwards say that he will not abide by the oath 93 Ind Cas 864=A I R 1927 Lah 99 see also 164 Ind Cas 1116=1936 O W N 841 A I R 1937 Nag 212, 38 P L R 1171=165 Ind Cas 513

12 If the party or witness refuses to make the oath or solemn

Procedure in case of refusal to make oath

affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the

nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal

Scope — In case of refusal the Court must note that the party was asked and he refused to make oath or affirmation of challenger A I R 1933

agreed to involve the participation of the person who agrees to be bound by the oath of the other side and where the failure to take the oath is wholly attributable to the act or omission of the person who agreed to be bound by the oath the result should be as if the oath had been taken, otherwise it would be open to him to resile from his offer to be bound by the oath at any time the places and for no reason whatever A I R 1935 Mad 591=158 Ind Cas 107 42 L W 370=1935 M W N 372 Where a plaintiff challenges the defendant to take oath and subsequently resiles from the agreement and make default the Court is not justified in dismissing the suit There is nothing in the Oaths Act to justify the dismissal of the plaintiff's suit The proper course for the Court is to record the plaintiff's objection and to proceed with the trial of the suit on the merits drawing such inference as the circumstances might warrant from the conduct of the plaintiff 163 Ind Cas 612=1936 M W N 42=A I R 1935 Mad 406=70 M L J 449

What amounts to refusal — Vide 37 P L R 1903

Presumption — Refusal by a party can give rise to a presumption that his case is false 2 C L R 476 contra 93 Ind Cas 830=A I R 1926 Cal 817, A I R 1933 Nag 52 But no such presumption arises in case of refusal by a party's witness 4 N L R 50

V — Miscellaneous

13 No omission to take any oath or make any affirmation, no

Proceedings and evidence not invalidated by omission of oath or irregularity.

substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding, or

render inadmissible any evidence whatever, in or in respect of which

such omission substitution or irregularity took place, or shall affect the obligation of a witness to state the truth

Child—Evidence of a child taken without oath is admissible 5 Bom L R 551
14 B L R 294 24 C W N 767=32 C L J 31 20 Bom L R 365 38 A 49
15 Mys L J 217

Sanction to prosecute—In case of giving false evidence where it is not stated in the deposition that it was taken on solemn affirmation the defect was cured by the section 18 C W N 1393

Omission—It covers omission whether accidental or intentional 15 B 359 14 B L R 294 16 M 105 41 C 406 11 C P L R 16 16 M 105 14 B L R 54 2 L B R 392, but see 9 L B R 88, 10 A 207 36 Ind Cas 468

14 Every person giving evidence on any subject before any Court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject *

Persons giving evidence bound to state the truth

Notes—A witness must state the truth no matter the trial may prove infructuous 19 M 375 As regards child witnesses vide 76 Ind Cas 1037 1923 Lah 332

[15 Amendment of Act XLV of 1860, sections 178, 181—*Repealed by Act I of 1934*]†

16 Subject to the provisions of sections 3 and 5 no person appointed to any office shall before entering on the execution of the duties of his office be required to make any oath or to make or subscribe any affirmation or declaration whatever

SCHEDULE.

(Repealed by Act XII of 1873)

THE OBSTRUCTIONS IN FAIRWAYS ACT

CONTENTS

PREAMBLE

SECTION

- 1 Short title Commencement
- 2 Central Government empowered to remove or destroy obstruction in fairway
- 3 Government entitled to expenses incurred in removing obstruction
Dispute concerning such expenses
- 4 Notice of removal to be given by Central Government
- 5 Things removed may in certain case, be sold
- 6 Proceeds how applied

SECTION

- 7 Vessel to include tackle cargo etc
- 8 Powers to make rules to regulate and prohibit the placing of obstructions in fairways
- 9 Penalty for breach of such rules
- 10
- 11
- 12 deemed to have taken hereunder
Savings of other powers possessed by Government
- 13 Application to fairways in inland water ways

* See Act XLV of 1860 s 191

† In Burma this section is in force which runs as follows —

The Indian Penal Code sections 178 and 181 shall be construed as if after word 'oath' the words 'or affirmation' were inserted

141, 26 Bom L R 713=82 Ind Cas 359 92 Ind Cas 819 The expression con-
used in the Indian Evidence
conclusive proof of the matter
77 This section is not applic-
22 W R 337 This section
729 Party's refusal to take
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Ind Cas 348=
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see also 164 Ir
1171=165 Ind Cas 513

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Proceedings and evidence not
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14 Every person giving evidence on any subject before any Court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject *
Persons giving evidence bound to state the truth

Notes—A witness must state the truth no matter the trial may prove infructuous 19 M 375 As regards child witnesses title 76 Ind Cas 1037 1923 Lah 332

[15 *Amendment of Act XLV of 1860, sections 178, 181—Repealed by Act I of 1934*]†

16 Subject to the provisions of sections 3 and 5 no person appointed to any office shall before entering on the execution of the duties of his office be required to make any oath, or to make or subscribe any affirmation or declaration whatever
Official oaths abolished

SCHEDULE.

(*Repealed by Act VII of 1873*)

THE OBSTRUCTIONS IN FAIRWAYS ACT

CONTENTS.

PREAMBLE	SECTION
SECTION	7 Vessel to include tackle cargo etc
1 Short title Commencement	8 Powers to make rules to regulate and prohibit the placing of obstructions in fairways
2 Central Government empowered to remove or destroy obstruction in fairway	9 Penalty for breach of such rules
3 Government entitled to expenses incurred in removing obstruction	10 " " " "
Dispute concerning such expenses	11
4 Notice of removal to be given by Central Government	deemed to have taken hereunder
5 Things removed may in certain cases, be sold	12 Saving of other powers possessed by Government
6 Proceeds how applied	13 Application to fairways in inland water ways

* See Act XLV of 1860, s 191

† In Burma this section is in force which runs as follows —

The Indian Penal Code sections 178 and 181 shall be construed as if after the word oath the words or affirmation were inserted

THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881. (ACT NO XVI OF 1881.)

(Received the Governor-General's assent on the 15th March, 1881)

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions, It is hereby enacted as follows —

Short title Commencement 1. This Act may be called the Obstructions in Fairways Act, 1881 *

But nothing herein contained shall apply to vessels [belonging to or hired by a contract made on behalf of the Crown] †

Notes — This Act is based on Imperial Statute 40 and 41 Vict c 16 (The removal of Wrecks Act 1877) This Act is more extensive than the above mentioned Statute It is not confined to obstructions caused by wrecks but it extends to fishing stakes, ballast and any other thing which may form obstruction or danger to navigation

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, [the Central Government] ‡ may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed ;

(b) if such thing is of such a description or so situate that, [in the opinion of the Central Government] ‡ it is not worth removing, cause the same or any part thereof to be destroyed

3 Whenever anything is removed under section 2, [the Central Government] ‡ shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed shall be decided by the District Magistrate ‡ or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties, and such decision shall be final

Notes — This section empowers the Government to realise cost of removal of obstruction from parties causing obstruction

4 The [Central Government] ‡ shall, whenever anything is removed under section 2, publish in the [official Gazette] ‡ a notification containing description of such thing, and the time at which and the place from which the same was so removed

* Certain words repealed by Act 10 of 1914 have been omitted

† Substituted by G I Order of 1937

‡ See Act V of 1893, s 3

Notes—Notice of removal of obstruction must be given in the local official Gazette

Things removed may, in certain cases be sold

5 If, after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the [Central Government]* in respect thereof,

the [Central Government]* may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid

Notes—The thing removed if unclaimed can be sold by the Government

6 On realising the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same

Provided that he makes the claim within one year from the date of the sale

Notes—After a year the sum deposited will be forfeited

7. For the purposes of this Act, the term 'vessel' shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment cargo, stores or ballast of a vessel and any proceeds arising from the sale of a vessel, and of the cargo thereof or of any other property recovered therefrom shall be regarded as a common fund

8 The [Central Government]* may, from time to time by notification in the [official Gazette]* make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will in his opinion, cause, or be likely to cause obstruction or danger to navigation

9 Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both

10 Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited

Compensation payable in certain cases for damage caused under this Act

* Substituted by G I Order of 1937

under section 8 any person having a right to maintain or create such obstruction shall be entitled to receive from the [Central Government]* reasonable compensation for any damage caused to him by such removal, destruction regulation or prohibition

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes† and not otherwise, and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads, is situate

Notes—This section applies where the person creating obstruction has got prescriptive right to do so. In such a case he is to be paid compensation as if the obstruction has been removed and the land acquired under the Land Acquisition Act (I of 1894)

11 Whenever any obstruction in a fairway leading to a port in

Certain action of the Government previous to passing of this Act be deemed to have been taken hereunder

British India has been removed or destroyed or whenever the creation of any such obstruction has been regulated or prohibited by an order of the [Central Government]* or a [Provincial Govern-

ment,]* previous to the passing of this Act such removal destruction regulation or prohibition shall be deemed to have been effected under this Act

12 Nothing herein contained shall be deemed to prevent the

Saving of other powers possessed by Government

exercise by the [Central Government]* of any other powers possessed by it in this behalf

13 * All references in this Act to the [Central Government]* shall

Application to fairways in inland waterways

in relation to fairways in inland waterways be construed as references to the Provincial Government concerned

THE OFFICIAL SECRETS ACT (XIX OF 1923)

CONTENTS

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SECTION

- 1 Short title extent and application
- 2 Definitions
- 3 Penalties for spying
- 4 Communications with foreign agents to be evidence of commission of certain offences
5. Wrongful communication etc of information
- 6 Unauthorised use of uniforms falsification of reports forgery personation and false documents

SECTION

- 7 Interfering with officers of the police or members of His Majesty's forces
- 8 Duty of giving information as to commission of offences
- 9 Attempts incitements etc
- 10 Penalty for harbouring spies
- 11 Search warrants
- 12 Power to arrest
- 13 Restriction on trial of offences
- 14 Exclusion of public from proceedings
- 15 Offences by companies etc
- 16 Repeals

* Substituted by G. I. Order of 1937

† See The Land Acquisition Act I (1 of 1894)

THE OFFICIAL SECRETS ACT, 1923

(ACT NO XIX OF 1923)

(Received the Governor General's assent on the 2nd April 1923)

An Act to consolidate and amend the law in British India relating to
Official Secrets

*[WHEREAS the Law in British India relating to official secrets is at present contained in two Acts of the Governor-General in Council, namely the Indian Official Secrets Act, 1889 and the Indian Official Secrets (Amendment) Act 1904 and one Statute of Parliament namely the Official Secrets Act, 1911 and

Whereas the Official Secrets Act 1911 has been amended by the Official Secrets Act 1920, which Statute applies to the United Kingdom and to certain British possessions, but not to British India, and

Whereas it is expedient that the law relating to Official Secrets in British India should be consolidated and amended

It is hereby enacted as follows —]

Notes — The Official Secrets Act 1889 (XV of 1889) enacted for India *mutatis mutandis*

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Object of the Legislation — 'It has for some time past been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further

Short title extent and applica
t on

[1 (1) This Act may be called the
Indian Official Secrets Act 1923

(2) It extends to the whole of British India and applies also —

(a) to all subjects of His Majesty and servants of the Crown
within any Indian State †, and

* In Burma the title and preamble have been omitted by G. B. Order of 1937

† Substituted by C. I. Order of 1937

(b) to all Indian subjects to His Majesty without and beyond British India]*

Notes—The extra territorial scope of the Bill has been extended to include a class of persons for whom the Indian Legislature is competent to legislate—*Report of the Select Committee*

Definitions.

2 In this Act, unless, there is anything repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty,

[(1A) References to a department of the Government include the Government of British India and any department and include also the Federal Railway

(2) expressions referring to communicating or receiving includes any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received, expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document, and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article note or document,

(3) "document" includes part of a document,

(4) "model" includes design, pattern, and specimen,

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use,

(6) "office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession,

(7) "photograph" includes an undeveloped film or plate,

(8) "prohibited place" means—

(a) any work of defence, arsenal, naval, military or air force establishment or station mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose or building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals oil or minerals of use in time of war,

* I "

"1

(2

and
side G B

Order

† Inserted in British India by G I Order of 1937 In Burma this sub section is not in force, side G B Order of 1937

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy,

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code, to fourteen years and in other cases to three years

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state, and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State

the latter word is used in clause 7 and it is desirable that the same word should be used in both clauses

Clause 3 (2) — We have limited the application of the provisions of the first part of the sub clause which facilitate proof of a purpose prejudicial to the safety or interests of the State to fourteen years under the sub clause (1) and in respect of those offences for which a special presumption was introduced in the second part of the sub clause we have limited the operation of that presumption by providing that it shall not be raised by the mere fact of the accused having improperly made, obtained, etc., a document of the nature covered by the sub clause. — *Report of the Select Committee*

4 (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without [British India]* shall be relevant for the purpose of proving that he has for a purpose

Communication with foreign agents to be evidence of commission of certain offences

* In Burma for 'British India' read 'British Burma' vide G. B. Order of 1937

prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be, or might be, or is intended to be, directly or indirectly, useful to an enemy

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without [British India]* visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without [British India]* the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person,

(b) the expression "foreign agent" includes any person who is or who has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without [British India]* prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without [British India]* committed, or attempted to commit, such an act in the interests of a foreign power,

(c) any address, whether within or without [British India]* in respect of which it appears that there are reasonable grounds, for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent

Notes—In (b) and (c) of clause 1 (2) the words "reasonably suspected" has been expanded in order to make it clear that it is the Court which entertains the suspicion. This is effected by the use of the words "it appears" [Cf clause 3 (2)]—*Vide Report of the Select Committee*

5 If any person having in his possession or control any secret official code or pass word or any sketch,

Wrongful communication
etc of information

plan, model article, note, document or information which relates to or is used

in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other

* In Burma for "British India" read "British Burma," vide G. B. Order of

than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it, or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State, or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof, or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document secret official code or pass word or informations,

he shall be guilty of an offence under this section

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both

Clause 5 (1)—In (a) we have inserted the word 'wilfully' as we do not think that negligent communications should be punishable except to the extent to which it is punishable under (d). We have made a similar insertion in (e) for the same purpose. We have also inserted the words 'or in a Court of Justice' in order to protect public officers who have used their discretion under section 124 of the Indian Evidence Act

Clause 5 (2)—We have thought it right to shift the burden of proof that the receipt was a voluntary one to the prosecution—*Report of the Select Committee*

6 (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

Unauthorised use of uniforms
falsification of reports
forgery
personation, and false documents

State—

(a) uses or wears without lawful authority, any naval, military air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform or

(b) orally, or in writing in any declaration or application or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission, or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence,

or other document of a similar character (hereinafter in this section referred to as an official document), or knowingly uses or has in his possession any such forged, altered, or irregular official document ; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement , or

(e) uses or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die seal or stamp, as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp ,

he shall be guilty of an offence under this section

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof , or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer , or

(c) without lawful authority or excuse manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid ,

he shall be guilty of an offence under this section

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the state, to any prosecution for an offence under this section relating to the naval, military or air force affairs of His Majesty, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years

Clause 6 (1) — We consider that the ordinary penal law provides a sufficient penalty for most if not that the penalty for State is affected
(2) and (4)

Clause 6 (2) — We consider that in respect of all offences created by sub clause (2) it should be necessary for the prosecution to prove that the acts complained of were done for a purpose prejudicial to the safety of the State For the insertion of the word 'wilfully' compare note on clause 5 (1) — *Report of the Select Committee*

7 (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede any police-officer or any member of His Majesty's forces engaged on guard sentry, patrol or other similar duty in relation to the prohibited place

(2) If any person acts in contravention of the provisions of this section he shall be punishable with imprisonment which may extend to two years or with fine or with both

Notes — 'Clause 7 (2)' The amendment is of a drafting nature only — *Report of the Select Committee*

8 (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police-officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years or with fine or with both

Clause 8 (1) — We have limited the duty of giving information on demand of various persons to the graver offences under the Bill — *Report of the Select Committee*

9 Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment and be liable to be proceeded against in the same manner as if he had committed such offence

10 (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons he shall be guilty of an offence under this section

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid to give on demand to a Superintendent of Police or other police-officer not below the rank of Inspector, empowered by an

Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both

Notes —“We have recast clause (10) to make it clear that it creates two separate offences and we have removed the ambiguity caused by the use of the words ‘omits or refuses’ and have required that the information shall be given on demand to the police officer who may demand it under clause (8).” —*Report of the Select Committee*

11. (1) If a [Presidency Magistrate],* Magistrate of the first class or Sub-Divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police-officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence, under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police-officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police-officer the like authority as may be given by the warrant of a Magistrate under this section

(3) Where action has been taken by a police-officer under subsection (2) he shall, as soon as may be, report such action, [in a Presidency-town to the Chief Presidency Magistrate, and outside such town]* to the District or Sub-Divisional Magistrate

Notes —“The amendment is necessary, first to give powers under this clause to

N. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

13 (1) No Court (other than that of a Magistrate of the first class especially empowered in this behalf by the "appropriate Government,"* which is inferior to that of a District [or Presidency]† Magistrate shall try any offence under this Act

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from [“appropriate Government”,‡ or some officer empowered by the Governor General in Council in this behalf]§

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in [British India] in which the offender may be found,

“(5) In this section the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the Provincial Government, and

(b) in relation to any other offence, the Central Government.”¶

Notes — The Committee have proposed no change in this clause but as Mr Neogy has intimated that he proposes to dissent on the ground that all offences under the Act should be triable only by a Court of Session the Committee think it right to express their views in favour of retaining the clause as it stands. Under the Indian Official Secrets Act, 1889 all Magistrates of the first class were authorised to try offences under the Act while under the Bill it is provided that the only Magistrates who may try cases shall be those described in sub clause (1) of this clause. Mr Neogy relies on section 3 of the Official Secrets Act 1911 in which it is laid down that an offence under the Act shall not be tried by any Court outside the United Kingdom. It stands read with the second schedule to the offences punishable under section 3 with imprisonment only by Courts of Session and the Committee are of opinion that the other offences under the Act can properly be tried by Magistrates of the rank named by sub clause (1) and that conclusions on the power of the Magistracy of the United Kingdom are merely misleading. The note moreover states

of 19

†

of 1937

§ In Burma for the words within brackets read the Governor or some officer empowered by the Governor in this behalf vide G. B. Order of 1937

¶ In Burma for the words “British India” read the words “British Burma” vide G. B. Order of 1937

¶ Sub section (5) has been inserted by G. I. Order of 1937. This sub section is not in force in Burma

G. I. Order
of 1937
937
I. Order

that under the Official Secrets Act 1920 all misdemeanours under that Act and under the Act of 1911 are triable summarily with the consent of the Attorney General and at the same time they do not forget that a person brought up for summary trial can claim to be tried at the assizes. They have also observed that on a trial under the Summary Jurisdiction Act the maximum sentence of imprisonment is three months even though on a trial for the same offence at the assizes on indictment the maximum sentence for the same offence is two years. In the opinion of the committee the decisive factor should be that this Bill sets out to adapt the provisions of the English Acts of 1911 to 1920 to Indian conditions and the Indian Legislature is the best judge as to the capacity of Magistrates in British India to try cases under the Act. —*Report of the Select Committee*

14 (1) In addition and without prejudice to any powers which a

Exclusion of public from proceedings

Court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any statement to be made in the proceedings would be prejudicial to the safety of the State, the public shall be excluded during

any part of the hearing the Court may make an order to that effect, but the passing of sentence shall in any case take place in public

Notes—The Court has been invested with the powers to hold the trial in camera for reasons of State. But the sentence in all cases must be pronounced in public

15 Where the person guilty of an offence under this Act is a

Offences by companies etc

company or corporation, every director and officer of the company or corporation

with whose knowledge and consent the offence was committed shall be guilty of the like offence

Notes—We have thought it right to shift the burden of proving knowledge and consent on the prosecution. —*Report of the Select Committee*

16 Repeals—*Repealed by Act XII of 1927*

THE OPIUM ACT, 1878

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- 11 Confiscation of opium
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- 13 Power to make rules regarding disposal of things confiscated and reward.

SECTION

- 14 Power to enter arrest and seize, on information that opium is unlawfully kept in any enclosed place
- 15 Power to seize opium in open places
- Power to detain search and arrest
- 16 Searches how made
- 17 Officers to assist each other
- 18 Vexatious entries searches seizures and arrests
- 19 Is use of warrants
- 20 Disposal of person arrested or things seized
- 21 Report of arrest and seizures
- 22 [*Repealed*]
- 23 Recovery of arrears of fees duties etc
- 24 Farmer may apply to Collector or other officer to recover amount due to him by licensee
- 25 Recovery of penalties due under

SCHEDULE [*Repealed*]

THE OPIUM ACT

(ACT NO. 1 OF 1878.)

(Received the Governor General's assent on the 9th January, 1878)

An Act to amend the law relating to opium

Preamble

WHEREAS it is expedient to amend the law relating to opium, It is hereby enacted as follows --

Short title

1. This Act may be called the Opium Act, 1878

It shall extend to such local areas as the [Provincial Government]* may, by notification in the [official Gazette]† from time to time, direct,

Local extent

And it shall come into force in each of such areas on such day as the [Provincial Government]* in like manner directs in this behalf

Commencement

2 Repealed by Act XII of 1891 and Act IV of 1894

Interpretation clause

3 In this Act, unless there be something repugnant in the subject or context,—

Opium

‘Opium’ means—

(i) the capsules of the poppy (*Papaver Samiferum* L.),

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport, and

(iii) any mixture, with or without neutral materials of any of the above forms of opium

but does not include any preparation containing not more than 0.2 per cent of morphine or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930‡

Notes —This Act has been declared in force in the Sonthal Parganas by Reg 3 of 1872 s 3 as amended by Reg 3 of 1899 s 2 in the Angul District by Reg 4 of 1913 s 9 in British Baluchistan by Reg 2 of 1913 s 3 in Upper Burma except the Shan States by Act 13 of 1898 s 4 in Arakan Hill District by Reg 1 of 1916, s 2

“Magistrate” means, [in the Presidency-towns, a Presidency Magistrate, and elsewhere]§ a Magistrate of the first class or (when specially empowered by the [Provincial Government]* to try cases under this Act) a Magistrate of the second class

‘Magistrate’

“Import” means “to import inter-provincially,” as defined in clause (j) of section 2 of the Dangerous Drugs Act 1930.†§

“Import”

“Export” means to “export inter-provincially,” as defined in clause (e) of section 2 of the Dangerous Drugs Act, 1930, “and”‡§

‘Export’

* In British India the words “Provincial Government”

1872 In Burma

† In British India

1872 In Burma

‡ Substituted by Act 11 of 1930

§ In Burma the words within brackets have been omitted by G. B. Order of 1937

"Transport" means to remove from one place to another "within the territories administered by the same [Provincial Government]* †

['Sale' does not include sales for export across customs frontiers as defined by the Central Government, and 'sell' shall be construed accordingly]‡

Notes—The word specially in 'specially empowered' occurring in s 3 of the Opium Act is used in speaking of individuals and in contrast with the word 'generally' 2 L W 238 28 Ind Cas 158

A second class magistrate cannot refuse to take up a case of importing opium in British India merely on the ground that the gravity of the offence required severer punishment than he was competent to inflict Rat Un Cr C 375

A magistrate who has power to issue a search warrant has the power himself to search A W N 1884, 213

Where a government notification empowers second class Magistrates of a particular locality mentioned in a list appended to it to try the case under the Opium Act that meets the requirements of this section 71 Ind Cas 958 Morphia falls within the definition of Opium 8 Lah 230 contra 1 Lah 443

Illegal manufacture of Chandu is an offence under this section A W N 1884 213

Licence to possess opium does not include the right to have opium transported from one place to another by a servant 13 M 191

Beinchi removed from pipe and reserved for further use is a preparation of opium L B R (1872 1892) 617 But morphia is not included in the term 'opium' 1 L W 443 'Opium' does not include bumsi or beinchi A I R 1933 Rang 258 The substance called Bondika Bhusa possesses in some measure the active properties of opium A I R 1936 Nag 240—1936 Cr C 1034

A licensed cultivator cannot transport opium without pass from one district to another 13 P R 1884 Cr

4 Except as permitted by this Act, or by any other enactment relating to opium for the time being in force or by rules framed under this Act or under any such enactment, no one shall—

Prohibition of poppy cultivation and possession etc of opium

- (a) possess opium
- (b) transport opium
- [(c) import or export opium]§ or
- (d) sell opium ||

Notes—Selling more than two *tollas* of opium is punishable 83 P R Cr 1919 Opium as defined in this section includes admixture of it L B R (1872 1892) 619 Under this Act the possession of opium is *prima facie* illegal 1 Weir 832

5 The [Provincial Government]* may, from time to time, by

Power to make rules to permit such matters notification in the [official Gazette],† make rules consistent with this Act, to permit, absolutely or subject to the payment of duty or to any other conditions and to regulate within the whole or any specified part of [the territories administered by such Government]** all or any of the following matter,—

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† In Burma for the words within quotations substitute within British Burma vide G B Order of 1937

‡ Substituted in British India by G I Order of 1937 In Burma these words are omitted

(a) the possession of opium ,

[(b) the transport of opium ,]*

(c) the importation or exportation of opium , and

(d) the sale of opium, and the form of duties leviable on the sale of opium by retail †

Provided that no duty shall be levied under any such rule or any opium imported, and on which a duty is imposed by or under the law relating to sea customs‡ for time being in force or under the Dangerous Drugs Act, 1930 §

Notes —A person shall be convicted for breach of rule under this section Rat Un Cr C 297

Person producing a licence is held to be the registered consumer L B R (1893 1900) 419

... the opium of
ence 45

1 Bom
J 571 1
Cr L J
188, 15 P R Cr 1918

Duty on opium imported by land

6 Repealed by Act II of 1930

[7 The Provincial Government may, by notification published in the official Gazette, declare, any place to be warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported therein.

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse]||

[8 The "Provincial Government"¶ may, from time to time, by notification in the [official Gazette]‡ make rules, consistent with this Act, to regulate the safe custody of opium warehoused under section 7, the levy of fees for such warehousing; the removal of such opium for sale or exportation, and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same]**

Penalty for illegal cultivation of poppy, etc 9 †† Any person who, in contravention of this Act, or of rules made and notified under section 5 [or section 8,]**

§ Substituted by Act 2 of 1930

1937 This section has been omitted

brackets have been omitted by G B

†† In section 9 clauses (a) and (b) have been omitted and clauses (c), (d), (e) and (f) have been re lettered (a), (b), (c) (d) and (e) respectively by Act II of 1930

- (a) possesses opium or
- (b) transports opium or
- [(c) imports or exports opium, or]*
- (d) sells opium, or

(e) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule, shall, on conviction before a Magistrate be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both,

and, where a fine is imposed the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced

Notes: I. -
tion must be by a Magistrate and not by

des guates a completed or manufactured article and not an article in the process of manufacture 73 Ind Cas 700 Consigning opium to himself is importing opium 46 A 146

The fact that the accused gave opium to his father and children to eat was of itself to show that he alone was not in possession of the quantities discovered in the almshouse 41 Ind Cas 588

The Opium Act contains no provision directing that a certain presumption shall be drawn on a search being made. It is the mere illegal possession that is punishable and that possession does not rest on any presumption that the law orders to be drawn. Persons who make a search illegally render themselves liable to be sued for damages but their illegal action does not affect the question whether the person whose property was illegally searched has committed an offence under the Opium Act. A I R 1934 1 ang 83 148 Ind Cas 1045

The conversion of opium into chandu another form of intoxicating drug is not the manufacture of Opium 9 P R 1881 Cr see also Rat Un Cr C 676

Breach of a condition of the licence is not an offence Rat Un Cr C 860

Mere neglect to keep account is not an offence 1 Weir 831 But see 20 Cr L J 419

Conviction is illegal when there is no breach of condition in the licence 41 P R 1317 Cr

A sale by the servant of the licensee is not a sale without a licence S C 285 Oudh

Illegal making over the opium is not selling opium 4 P R 1884 Cr

A mere contemplation of violation is not punishable 15 Cr L J 667

Accused was convicted for having possessed a quantity of opium in excess of the d that takes the accused shown in the the part of

Moderate punishment under this section should be awarded U B R 1692 1896

Cr L J 43
ium is
session
master
but a
al 22

* In Burma the words within brackets have been omitted by G B Order of 1937

opium does not make the boat
 does not necessarily connote
 = 96 Cr L J 1437 = A I R
 of opium jointly with her
 at the opium was found in the
 such for example as that she
 dealing with it in any manner

A I R 1937 Rang 434

quantity is punishable Rat
 rary custody does not amount
 e punished on mere suspicion
 d 668, 35 Cr L J 1220 = 151

Ind Cas 66

See also A W N 1901 117 37 C 24 17 C P L R 75 41 P R 1917 Cr, U B R
 (1892 1896) Vol I 133 15 Cr L J 532 8 C W N 349 1 Weir 832, 12 Cr L J
 116 Rat Un Cr C 909 6 L B R 314 13 Cr L J 122 8 P R 1837 Cr 3 Lah
 L J 49 1918 M W N 361 As regards joint possession, title 3 P R Cr 1918, 3 Lah
 L J 49 24 O C 235 53 I C 153 46 C 420 31 P L R 140, A I R 1933
 Lah 320

as opium consti
 32 C 557 The
 hence A I R

While the possession of opium as an article of household persons have an
 equal right to access the possession cannot in law be attributed to one of them and cannot
 form the basis of conviction 3 Pat L T 132 A boatman of a boat in which contraband
 opium is found is under no liability to give satisfactory account 59 Ind Cas 133 see
 also 51 Ind Cas 195 A medical practitioner can be punished for selling morphia to his
 patients 24 C W N 343 Keeping 18 tollas of opium does not contravene the rules
 under the Act Rat Un Cr C 287

Where there are two joint owners of a shop but one of them had a licence to keep opium
 but which had expired by efflux of time the possession of opium should be attributed to
 him alone 83 Ind Cas 1044 26 Cr L J 1263 = 6 Lah 311

e of possession of more
 possession of the accused
 ld on behalf and for the
 possession referred to in
 1000 arises unless and

R 13 13 Ind Cas 778 Where a
 unsold opium in the custody of the
 the accused was in possession of the opium
 nce of joint possession of more than one
 ential to know that a certain number of
 joined in the purchase, and that it was
 13 P R 1837 Cr In prosecution under
 mply the prosecution is bound to prove that
 joint family house was in the exclusive
 ember of the joint family charged with the
 ecause it was for the first
 nder the Act it matters not
 d was arrested or found in
 There is no rule allowing a
 r to have opium in excess of
 or which has been handed
 ere 50 tollas of opium were
 came there the master of
 8 C W N 349 Being in
 opium is to possess opium
 The holder of a mate's receipt
 consignment covered by it
 e possession of an amount
 question or to any alleged
 This clause contemplates
 portion of the house which is
 acie presumption of his guilty

* The fact of the presence of a person in a chandu den where several persons are
 smoking chandu or even of his being found smoking there could not warrant his conviction

for abetment of the offence on the part of the master of the establishment of possessing chandu to a larger amount than that allowed by Law A W N 1901, 117 For the purposes of an offence under this clause nothing is necessary beyond possession of the

of opium is not illegal U B R 1909 2nd Qr Opium I U B R (1897 1901) Vol I 232 Severe punishments for an offence under cl (c) of this section are unsuitable in cases of possession by a Burman woman of a small quantity for her own use U B R (1899 1896) Vol I 135 But where an accused person is convicted of an offence under the Opium Act under the conditions which lead the Magistrate to conclude that he is engaged in traffic in opium on a large scale or in transporting opium in considerable

quantity be awarded in addition
the section is a penal one and
if opium is found in a man's

Where opium is found in the
luggage of a child in charge of an adult the presumption is that it is in the charge of the adult U B R (1892 1896) Vol I 133

When the accused was a visitor to a house and inside the bed used by her there was found a quantity of opium she should not be convicted of an offence under clause (c) 75 Ind Cas 358 (1), 2 Bur L J 16

The preparation of adulterated opium pills is not an offence where the amount of opium found made up into pills and manufactured is not more than what is allowed

under and opium refuse are not opium within
amended by Schedule II Dangerous Drugs Act

the definition of 'prepared opium' under s 2 (f)
possession of prepared opium in contravention of

s 4 (c) of that Act is punishable under s 10 (b) of that Act and not under s 9 (a) of the Opium Act 171 Ind Cas 619-33 Cr L J 1092=A I R 1937 Rang 346 In view of the change in the definition of opium in the Opium Act effected by s 40 and the Second Schedule to the Dangerous Drugs Act, the only meaning which can be attached to the words 'opium water' in the Rules and Directions made under the Opium Act is a mixture of water with capsules of the poppy or with the juice of such capsules of the poppy, or a mixture of such with neutral materials Opium water collected from the washing of opium pipes does not therefore come under the rule and the possession of such opium water is not punishable 169 Ind Cas 344=33 Cr L J 765 -14 Rang 694-A I R 1937 Rang 194

Clause (c) —Rat Un Cr C 969 2 P R 1911 Cr 46 P W R 1916 Cr Magistrate should impose heavy penalties where offence of smuggling opium is clearly proved A I R 1932 Cal, 405

Clause (e) —Failure to write up the account is a breach of the rule and therefore penal under s 9 (g) 2 O W N 303=89 Ind Cas 250=12 O L J 283

10 In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act

Possession —The term possession implies knowledge on the part of the alleged possessor L B R (1872 1892) 573 L B R (1872 1892) 597 See also 11 Cr L J 658

presumption cannot be used to establish the fact 39 C 581=12 C L J 19 8 C 161
 Oudh Section 10 contains no reservation in favour of common carriers One of the objects
 of enactments such as s 10 is to induce persons like carriers to exercise special vigilance in
 carrying on their business and this would apply as much to a common carrier as to a
 carrier under a special contract 8 C W N 349

Confiscation of opium 11* In any case in which an offence
 under section 9 has been committed —

(a) the opium in respect of which any offence under the same
 section has been committed,

(b) where, in the case of an offence under clause (b) [or (c)†] of
 the same section, the offender is transporting [importing or exporting]†
 any opium exceeding the quantity (if any) which he is permitted to
 transport, [import or export, as the case may be]† the whole of the
 opium which is transporting, importing or exporting,

(c) where, in the case of an offence under clause (d) of the same
 section, the offender has in his possession any opium other than the
 opium in respect of which the offence has been committed, the whole
 of such other opium,

shall be liable to confiscation

The vessels, packages and coverings in which any opium liable to
 confiscation under this section is found, and the other contents (if
 any) of the vessel or package in which such opium may be concealed
 and the animals and conveyance used in carrying it shall likewise be
 liable to confiscation

Notes —This does not contemplate that every receptacle in the nature of a ship or a
 house or a carriage in which a small quantity of opium is to be found is liable to be confis-
 cated 15 C W N 296 See also 2 Pat L T 63 No appeal lies against an order of
 confiscation under this section 1 Weir 835 The order of confiscation passed under
 this section in respect of a motor car which is used in smuggling opium is illegal if the
 owner of the car has not been given an opportunity to prove that he did not know or had
 no reason to believe that it was used for that purpose 2 Pat L T 63 Opportunity to
 be heard should be given before order of confiscation is passed 30 C W N 240, 1925
 Cal 1021

12 When the offender is convicted or when the person charged
 with an offence in respect of any opium is
 acquitted, but the Magistrate decides that
 the opium is liable to confiscation such
 Order of confiscation by whom
 to be made
 confiscation may be ordered by the Magistrate

Whenever confiscation is authorised by this Act, the officer
 ordering it may give the owner of the thing liable to be confiscated
 an option to pay, in lieu of confiscation such fine as the officer
 thinks fit

When an offence against this Act has been committed but the
 offender is not known or cannot be found or when opium not in the
 possession of any person cannot be satisfactorily accounted for the
 case shall be enquired into and determined by the Collector of the
 District or Deputy Commissioner, or by any other officer authorised
 by the [Provincial Government]† in this behalf, either personally or
 in right of his office who may order such confiscation Provided
 that no such order shall be made until the expiration of one month
 from the date of seizing the things intended to be confiscated, or

* The necessary change of letters have been made by Act II of 1900

† The words within brackets have been omitted in British Burma vide G B Order of
 1937

‡ In British India the words within brackets have been substituted by G I Order of
 1937 In Burma for these words read the word Governor vide G B Order of 1937

without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produced in support of their claims

13 The [Provincial Government]* may† from time to time by notification in the [official Gazette]‡ make rules, consistent with this Act, to regulate—
 Power to make rules regarding disposal of things confiscated and rewards

(a) the disposal of all things confiscated under this Act, and,

(b) the rewards to be paid to officers and informers §

Notes—Rewards in opium cases should not in the absence of exceptional circumstances usually exceed Rs 5 for each $\frac{1}{2}$ tola of opium found. Magistrates should be careful as to the limit of a reward and to have no doubt that it can be paid out of the fine and value of the opium combined. L B R (1872 1892) 568 *ibid* 567

14 Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorised by the [Provincial Government]* in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset—
 Power to enter arrest and seize, on information that opium is unlawfully kept in any enclosed place

(a) enter into any such building, vessel or place,

(b) in case of resistance break open any door and remove any other obstacle to such entry,

(c) seize such opium|| thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium and

(d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Notes—A mere irregularity in the search will not set aside conviction. 53 Ind Cas 153 53 Ind Cas 150 2 P L T 626

Power to seize opium in open places

15 Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium,

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law and, if such person has opium in his possession, arrest him and any other persons in his company
 Power to detain search and arrest

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor' vide G B Order of 1937

† Certain words here have been omitted by Act 38 of 1920

‡ In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Gazette' vide G B Order of 1937

§ In British India these words 'out of the proceeds of fines and confiscation this Act have been omitted by G I Order of 1937. In Burma these words are omitted

|| Certain words after this have been omitted by Act II of 1931

Notes—This section does not authorise an officer to enter and search a boat between sunset and sunrise against the will of the person in charge of it, without a warrant from another authorised under s 19 5 L B R 56 F B

16 All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure *

Searches how made

Notes—This section lays down that searches under ss 14 and 15 shall be made in accordance with the provisions of the Code of Criminal Procedure 4 L B R 121 A I R 1930 Rang 49 Court is not competent to reject the evidence of search witnesses who do not come from immediate vicinity A I R 1937 Rang 1150

17 The officers of the several departments mentioned in section 14, shall upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act

Officers to assist each other

18 Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall for every such offence, be punished with fine not exceeding five hundred rupees

19 The Collector of the District, Deputy Commissioner or other officer authorised by the [Provincial Government]† in this behalf either personally or in right of his office or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure ‡

Notes—The irregularity of the search will impair the value of the evidence regarding the discovery of opium U B R (1896 1898), Vol I 155

20 Every person arrested, and thing seized under section 14 or section 15 shall be forwarded without delay to the officer in charge of the nearest police station, and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Every officer to whom any person or thing is forwarded under this section, shall with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing

* Act V of 1898

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

‡ See Act V of 1882, s 3 and Act V of 1893

21 Whenever any officer makes any arrest or seizure under this Act, he shall within forty eight hours next after such arrest or seizure make a full report of all the particulars of such arrest or seizure to his immediate official superior

22 [Procedure in case of illegal poppy-cultivation] *Repealed by Act II of 1930*

23 Any arrear of any fee or duty imposed under this Act or any rule made hereunder

and any arrear due from any farmer of opium revenue, may be recovered from the person primarily liable to pay the same to the [Provincial Government]* or from his surety (if any) as if it were an arrear of land revenue

24 When any amount is due to a farmer of opium revenue from his licensee in respect of a licence, such farmer may make an application to the Collector of the District Deputy Commissioner or other officer authorised by the [Provincial Government]† in this behalf praying such officer to recover such amount on behalf of the applicant and, on receiving such application such Collector Deputy Commissioner, or other officer, may, in his discretion recover such amount as if it were an arrear of land revenue and shall pay any amount so recovered to the applicant

Provided that the execution of any process issued by such Collector, Deputy Commissioner or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer

Provided also that nothing contained in this section, or done thereunder shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise, amount due to him from such licensee

25 When any person in compliance with any rule made there under gives a bond for the performance of any duty or act such duty or act shall be deemed to be a public duty or an act in which the public are interested as the case may be within the meaning of the Indian Contract Act 1872 section 74 and upon breach of the condition of such bond by him the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land revenue

SCHEDULE

[*Repealed by Act VII of 1891*]

Order of

Notes—This section does not authorise an officer to enter and search a boat between sunset and sunrise against the will of the person in charge of it without a warrant from another authorised under s 19. *U B R 56 F B*

16 All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure*

Searches how made

N 111—M

d 15 shall be made in
4 L B R 121 A I F
if search witnesses who

17 The officers of the several departments mentioned in section 14 shall upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act

Officers to assist each other

made, be legally bound to assist each other

18 Any officer of any of the said departments who without reasonable ground of suspicion, enters or searches or causes to be entered or searched any building, vessel or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches or arrests any person

Vexatious entries searches seizures and arrests

searched any building, vessel or place,

on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person

shall for every such offence be punished with fine not exceeding five hundred rupees

19 The Collector of the District, Deputy Commissioner or other officer authorised by the [Provincial Government]† in this behalf either personally or

Issue of warrants

officer authorised by the [Provincial Government]† in this behalf either personally or

in right of his office or a Magistrate may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure ‡

Notes—The irregularity of the search will impair the value of the evidence regarding the discovery of opium. *U B R (1896 1898) Vol I 155*

20 Every person arrested and thing seized under section 14 or

section 15 shall be forwarded without delay to the officer in charge of the nearest

police station and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Every officer to whom any person or thing is forwarded under this section shall with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing

* Act V of 1893

† In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Colonial' vide G I Order of 1937

‡ See Act V of 1892 s 3 and Act V of 1893

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior

22 [Procedure in case of illegal poppy-cultivation] *Repealed by Act II of 1930.*

23 Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium revenue, may be recovered from the person primarily liable to pay the same to the [Provincial Government]* or from his surety (if any) as if it were an arrear of land revenue

24 When any amount is due to a farmer of opium revenue from his licensee, in respect of a licence, such farmer may make an application to the Collector of the District, Deputy Commissioner or other officer authorised by the [Provincial Government]† in this behalf, praying such officer to recover such amount on behalf of the applicant, and, on receiving such application, such Collector, Deputy Commissioner, or other officer, may, in his discretion, recover such amount as if it were an arrear of land revenue, and shall pay any amount so recovered to the applicant

Provided that the execution of any process issued by such Collector, Deputy Commissioner or other officer for the recovery of such amount, shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer

Provided also that nothing contained in this section, or done thereunder, shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise, amount due to him from such licensee

25 When any person, in compliance with any rule made thereunder, gives a bond for the performance of any duty or act such duty or act shall be deemed to be a public duty or an act in which the public are interested as the case may be, within the meaning of the Indian Contract Act, 1872 section 74, and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land revenue

SCHEDULE

[*Repealed by Act XII of 1891*]

THE INDIAN PAPER CURRENCY ACT, 1923

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THE INDIAN PAPER CURRENCY ACT, 1923.

(ACT NO X OF 1923)

PASSED BY THE INDIAN LEGISLATURE

(Received the assent of the Governor-General on the 5th March, 1923)

An Act to consolidate the law relating to the Government Paper Currency

WHEREAS it is expedient to consolidate the law relating to the Government Paper Currency, It is hereby enacted as follows —

Preliminary

Short title and extent

1 (1) This Act may be called the Indian Paper Currency Act 1923

(2) It extends to the whole of British India inclusive of British Baluchistan and the Santhal Parganas

Definition

2 In this Act, "universal currency note means—

(a) a note of the denominational value of one rupee, two and a half rupees, five rupees, ten rupees fifty rupees, or one hundred rupees, or

(b) a note of any other denominational value which the [Central Government]* may by notification in the [official Gazette]* specify in this behalf and 'gold bullion' includes gold coin †

The Currency Department

3 There shall continue to be department of the public service, to be called the Currency Department, whose function shall be the issue of promissory notes of the Government of India, to be called currency notes payable to bearer on demand and of such denominational values as the [Central Government]* may direct

4 At the Head of the Department there shall be an officer to be called the Controller of the Currency (hereinafter referred to as the Controller)

Power to establish circles of issue offices of issue and currency agencies

5 The [Central Government]* may, by notification in the [official Gazette] - *

(a) establish districts, to be called circles of issue, seven of which circles shall include the towns of Calcutta, Madras Bombay, Rangoon, Lahore Cawnpore and Karachi respectively

(b) appoint in each circle some one town to be the place of issue of currency notes as hereinafter provided,

(c) establish in each such town an office or offices of issue, and

(d) establish in any town situate in any circle an office, to be called a currency agency

6 For each circle of issue there shall be an officer in charge to be called the Deputy Controller of the Currency and for each Currency Agency an officer to be called the Currency Agent

Subordination of Officers

7 For the purposes of this Act—

(a) Deputy Controllers of the Currency shall be subordinate to the Controller, and

(b) the Currency Agent at any town shall be subordinate to the Deputy Controller of the Currency for the circle of issue in which that town is situate

Appointment of Officers

8 All officers under this Act shall be appointed by the [Central Government]*

Supply and issue of Currency Notes

9 (1) The Controller shall provide currency notes of the denominational values prescribed under this Act and shall supply the Deputy Controllers with such notes as they need for the purposes of this Act

(2) The Deputy Controllers shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act

* Substituted by G. I. Order of 1937

† Inserted by Act 4 of 1937

* Substituted by G. I. Order of 1937

(3) Every such note, other than a universal currency note, shall bear upon it the name of the town from which it is issued

10 The name of the Controller or one of the Deputy Controllers, or of some other person authorised by the Controller or by one of the Deputy Controllers to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery, and, when so impressed, shall be deemed to be a valid signature

11 The officers in charge of circles of issue shall, in their respective circles, on the demand of any person, issue from the office or offices of issue established in their respective circles currency notes of the denominational values prescribed under this Act, in exchange for the amount thereof—

(a) in rupees or silver half rupees,* or

(b) in rupees made and declared to be a legal tender under the provisions of the Native Coinage Act 1876 †

12 Any Currency Agent to whom currency notes have been supplied under section 9 may, if he thinks fit, on the demand of any person issue from his agency any such notes in exchange for the amount thereof in any coin specified in section 11.

13 The officers in charge of circles of issue shall, on the question of the Controller, issue to any Government Treasury currency notes in exchange* for gold bullion at the rate of one rupee for 8 47512 ‡ grains troy of fine gold

Currency Notes where legal tender and where payable

14 A universal currency note shall be a legal tender at any place in British India, and

any other currency note shall be legal tender at any place within the circle from which the note was issued for the amount expressed in the note in payment or on account of—

(a) any revenue or other claim to the amount of one rupee or upwards due to the Government of India and

(b) any sum of one rupee or upwards, due by government of India or by any body corporate or other person in British India

Provided that no currency note shall be deemed to be a legal tender by the Government of India at any office of issue

15 A currency note shall be payable at the following offices of issue, namely

(a) a universal currency note at any office of issue,

(b) a currency note other than a universal currency note at any office of issue in the town from which it was issued

* Certain words after this, repealed by Act 4 of 1927 have been omitted

† 1N of 16°G

‡ Substituted by Act 4 of 1927

Provided that any such note issued before the 18th day of February, 1910, shall also be payable,—

(i) in the case of a note issued from the office at Cawnpore or Lahore, at any office of issue in Calcutta, and

(ii) in the case of a note issued from the office at Karachi, at any office of issue in Bombay

16. For the purposes of sections 14 and 15, currency notes issued from any currency agency shall be deemed to have been issued from the town appointed under section 5 to be the place of issue in the circle of issue in which

Currency notes issued from currency agencies where deemed to be issued.

that agency is established.

17. Where an office of issue is closed, the [Central Government]* shall, by notification in the [official Gazette]* direct that, with effect from the date of the closing of such office, all currency notes issued therefrom shall, for the purposes of sections 14 and 15, be deemed to have been issued from such other office as may be specified in such notification

Provision in case of closure of office

Reserve

18. (1) The provisions contained in this section shall not come into operation until such day (hereinafter referred to as the appointed day) as the [Central Government]* may direct in this behalf

(2) A Reserve shall be maintained for the satisfaction and discharge of the currency notes in circulation and all such notes shall be deemed to have been issued on the credit of the revenues of India as well as on that of the Reserve

(3) The Reserve shall consist of two parts, namely —

(a) the metallic Reserve, and

(b) the securities Reserve

(4) The metallic Reserve shall consist of the total amount represented by the† rupees, silver half rupees, and gold and silver bullion for the time being held on that account by the Secretary of State for India in Council and by the [Central Government] *

Provided that no amount of gold† bullion held by the Secretary of State in the United Kingdom in excess of fifty millions of rupees in value reckoned at the rate hereinafter provided for shall be included in the metallic Reserve.

(5) The securities Reserve shall consist of the securities which are for the time being held on that account by the Secretary of State for India in Council and on behalf of the [Central Government] .*

Provided that—

(a) no securities held by the Secretary of State for India in Council, other than securities of the United Kingdom the date of maturity of which is not more than one year from the date of their purchase, shall be included in the securities Reserve, and

(b) the securities held on behalf of the [Central Government]* shall be securities of the Government of India and shall not

* Substituted by G. I. Order of 1937

† Certain words after "repealed by Act 4 of 1937, have been omitted.

exceed in amount two hundred millions of rupees of which an amount of not more than one hundred and twenty millions of rupees may be securities created by the Government of India and issued to the Controller (such securities being hereinafter referred to as created securities)

(6) For the purposes of this section the expression "currency notes in circulation" means the whole amount of currency notes at any time in circulation

Provided that currency notes which have not been presented for payment in the case of notes of the denominational value of fifty or one hundred rupees within forty years and in the case of notes of any denominational value exceeding one hundred rupees, within one hundred years, from the first day of April following the date of their issue shall be deemed to be not in circulation

Provided, further that all such notes shall be deemed to have been issued on the credit of the revenues of India and shall, if presented for payment be paid from such revenues

(7) Save as hereinafter provided in section 20 the amount of currency notes in circulation at any time shall not exceed the amount of the metallic Reserve together with the amount of the securities Reserve

Provided that it shall not be lawful for the [Central Government]* to direct the issue of currency notes, if or to the extent that such issue would have the effect of raising the amount of notes in circulation to an amount in excess of twice the amount for the time being of the metallic Reserve

(8) For the purpose of determining—

(a) the amount of the metallic Reserve, gold bullion shall be reckoned at the rate of one rupee for '847512 † grains troy of fine gold, and silver bullion at the price in rupees at which it was purchased or, in the case of bullion obtained by melting down silver coin issued under the authority of the [Central Government]* at the rate of one rupee for 165 grains troy of fine silver, †

(b) the amount of the securities Reserve purchased securities shall be reckoned at the price at which they were purchased and created securities at the market price of similar securities on the date of their issue

(9) The securities of the Government of India in the Reserve shall be held by the Controller and the Master of the Mint at Calcutta or of such other Mint as the [Central Government]* may direct in this behalf, in trust for the Secretary of State for India in Council

19 (1) As soon as conveniently may be after the relation of the amount of the currency notes in circulation to the amount of the Reserve has been brought into conformity with sub sections (2) to (8) of section 18 and

the metallic Reserve is not less than half the amount of currency notes in circulation the [Central Government]* shall fix the appointed day

(2) The provisions contained in this section shall be in force until the appointed day but shall as from that day, be deemed to be repealed

Substituted by G. I. Order of 1937

† Substituted by Act 4 of 19

Inserted by Act 36 of 1933

(3) Save as hereinafter provided in section 20, the whole amount of currency notes at any time in circulation shall not exceed the total amount represented by the* rupees silver half-rupees and gold bullion, and the sum expended in the purchase of the silver bullion and securities, which are for the time being held by the Secretary of State for India in Council and by the [Central Government]† as a reserve to provide for the satisfaction and discharge of the said notes, and the said notes shall be deemed to have been issued on the credit of the revenues of India as well as on the security of the said coin bullion and securities

Provided that, for the purposes of this sub-section currency notes which have not been presented for payment, in the case of notes of the denominational value of fifty or one hundred rupees within forty years, and, in the case of notes of any denominational value exceeding one hundred rupees within one hundred years, from the first day of April following the date of their issue, shall be deemed not to be in circulation

Provided, further, that all notes which are declared under the first proviso to this sub section not to be in circulation shall be deemed to have been issued on the credit of the revenues of India and shall, if subsequently presented for payment, be paid from such revenues

Explanation — ‘For the purposes of this sub section, [gold bullion shall be reckoned at the rate of one rupee for 8 47512 grains troy of fine gold and]‡ the sum expended in the purchase of silver bullion obtained by melting down silver coin issued under the authority of the [Central Government]† shall be deemed to be the value of the bullion calculated at the rate of one rupee for 165 grains troy of fine silver’ §

(4) The securities mentioned in sub section (3) shall be securities of the United Kingdom of Great Britain and Ireland or of the Government of India or securities issued by the Secretary of State for India in Council under the authority of Act of Parliament and charged on the revenues of India, and the value of them at the price at which they are purchased shall not exceed [one thousand]|| millions of rupees

‘Provided that the value of created securities included in the said securities at the price at which they were purchased shall not exceed five hundred millions of rupees’ ¶

(5) If the Secretary of State for India in Council consents to hold in gold* bullion or in silver bullion or in securities of the kinds men-

tioned in sub-section (4) the equivalent in value to notes issued in India as a reserve to secure the payment of such notes, the [Central Government]† may from time to time direct that currency notes shall be issued to an amount equal to the value of the * bullion and securities so held by the Secretary of State for India in Council

(6) Notwithstanding anything to the contrary in this Act, any securities created by the Government of India and issued to the Controller shall, for the purposes of this Act, be deemed to be securities

* Certain words after this repealed by Act IV of 1927 have been omitted

† Substituted by G. I. Order of 1937 ; Inserted by Act 4 of 1927

§ Added by Act 36 of 1923

|| Substituted by Act II of 1925

¶ Omitted by Act 4 of 1927

purchased by the [Central Government]* and the market price, on the day such securities were so issued, of similar securities shall be deemed to be the price at which the securities so created were purchased, and all references to securities so purchased, wherever occurring in this Act, shall be deemed also to refer to securities so created and all references to sums expended in such purchases or to prices paid therefor shall be deemed, in the case of securities so created, to refer to such prices, and this Act shall be construed accordingly

(7) As long as the value of securities created by the Government of India and issued to the Controller and deemed in accordance with the provisions of the foregoing sub-section to the securities purchased by the [Central Government]* exceeds one hundred and twenty millions of rupees, all interest derived from the securities in the Reserve shall, with effect from the first day of April "1935"† be applied in reduction of such excess holding of securities and the Auditor-General shall in every year grant a certificate of the amount of such interest and shall also certify whether or not it has been so applied. For the purposes of this sub-section securities so created and issued shall be deemed to carry interest at the same rate as other similar securities

(8) The securities purchased by the [Central Government]* shall be securities of the Government of India and shall be held by the Controller and the Master of the Mint at Calcutta or of such other Mint as the [Central Government]* may direct in this behalf, in trust for the Secretary of State for India in Council

20 Notwithstanding anything to the contrary in section 18 or section 19, the [Central Government]* may authorise the Controller

Power to issue currency notes against bills of exchange not exceeding one hundred and twenty millions of rupees against bills of exchange

which will mature within ninety days from the date of such issue and satisfy such other conditions as the [Central Government]* may, by general or special order prescribe. Currency notes so issued shall be in addition to those against which the Reserve is held and shall be deemed to have been issued on the credit of such bills and of the revenues of India and shall, when presented, be paid from such revenues

21 Subject to the provisions of sections 18 and 19, the [Central Government]* may at any time, if he thinks it expedient, convert any of the coin or bullion for the time being held by him

Power to dispose of coin and bullion in reserve as a part of the reserve into coin of any of the kinds mentioned in section 11 or into gold or silver bullion

22 Notwithstanding anything to the contrary in this Act, any coin or bullion which is held by or on behalf of the Secretary of State for India in Council in the United Kingdom or under the control of the Government of any part of His Majesty's

Coin or bullion not in India when deemed to be part of the reserve Dominions for the purpose of coinage for, or transmission to, the [Central Government]* and any coin or bullion which is in course of transmission from the Secretary of State

* Substituted by G. I. Order of 1937

† Substituted by Finance Act of 1931 (IV of 1934)

for India in Council or the Government of any part of His Majesty's Dominions to the [Central Government]* and any coin or bullion which is in the course of transmission from the [Central Government]* to the Secretary of State for India in Council or the Government of any part of His Majesty's Dominions shall be deemed, during the period such coin or bullion is so held or is so in course of transmission, to be part of the reserve referred to in sections 18 and 19

23 (1) The Controller may, at any time, when ordered so to do by the [Central Government]* sell and dispose of any of the securities held under sub-section (9) of section 18 or sub-section (8) of section 19

Power to sell and to place
Indian securities

(2) For the purpose of effecting such sales the Master of the Mint at Calcutta or of such other Mint as aforesaid shall, on a request in writing from the Controller, at all times sign and endorse the securities, and the Controller, if so directed by the [Central Government]* may purchase securities of the Government of India to replace such sales

24 An account showing the amount of the interest accruing on the securities held as part of the Reserve under this Act and the expenses and charges incidental thereto, shall be rendered annually by the Controller to the [Central Government],* and published annually in the [official Gazette]*

Account of interest on securities

Private Bills payable to Bearer on demand

25 No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person

Prohibition of issue of private
bills or notes payable to bearer
on demand

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts

26 (1) Any person contravening the provisions of section 25 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed

Penalty for issuing such bills
or notes and institution of prosecutions

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn accepted, made or issued

Supplementary Provisions

27 An abstract of the accounts of the Currency Department, showing—

Abstracts of accounts

* Substituted by G. I. Order of 1937.

(a) the whole amount of currency notes in circulation,

(b) the amount of coin and bullion reserved, distinguishing gold from silver and showing separately the amount of coin or bullion held by or on behalf of the Secretary of State for India in Council or in transit from or to India, or in the custody of the Mint Master during coinage,

(c) the nominal value of, and the price paid for, the securities held as part of the reserve, showing separately those held by the Secretary of State for India in Council and those held in India under sub-section (9) of section 18 or sub-section (8) of section 19, and

(d) the amount of currency notes issued against bills of exchange under the provisions of section 20,

shall be made up four times in each month by the Controller, and published, as soon as may be, in the [official Gazette] *

28 Notwithstanding anything contained in any enactment or rule

of law to the contrary, no person shall as of right be entitled to recover from the Government of India the value of any lost mutilated or imperfect currency note

Provided that the [Central Government]* may, by rule prescribe the circumstances, conditions and limitations under which the value of such notes may be refunded as of grace

29 (1) The [Central Government]* may make rules to carry out the purposes and objects of this Act

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) fix the denominational values for which currency notes shall be issued,

(b) provide for the alteration of the limits of any of the circles of issue

(c) declare the places at which currency notes shall be issued, and

(d) prescribe the circumstances in and the conditions and limitations subject to which the value of lost mutilated or imperfect currency notes may be refunded at the office of issue

(3) Every such rule shall be published in the [official Gazette]* and, on such publication shall have effect as if enacted in this Act

Repeals

30 The enactments mentioned in the Schedule are hereby repealed to the extent specified in the last column thereof

Provided that all securities purchased and notes issued under the Indian Paper Currency Act 1910 and all securities and notes which under section 30 of that Act, are to be deemed to have been purchased or issued thereunder shall, if undisposed of or in circulation at the commencement of this Act be deemed to have been respectively purchased and issued under this Act

Provided further, that all currency notes which under the said section 30, are to be deemed to have been issued from the office of issue in the town of Cawnpore, shall still be deemed to have been issued from that office

THE SCHEDULE
(ENACTMENTS REPEALED)
[See section 30]

Year	No	Short title	Extent of repeal
1910	II	The Indian Paper Currency Act, 1910	So much as has not been repealed
1911	VII	The Indian Paper Currency (Amendment) Act, 1911	The whole
1914	V	The Repealing and Amending Act, 1914	So much of the Second Schedule as relates to the Indian Paper Currency Act 1910
1917	XIV	The Indian Paper Currency (Amendment) Act, 1917	So much as has not been repealed
1920	XLV	The Indian Paper Currency (Amendment) Act 1920	The whole
1922	XII	The Indian Finance Act 1922	Section 6

THE INDIAN PASSPORT ACT, 1920.

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THE INDIAN PASSPORT ACT. 1920

(ACT NO XXXIV OF 1920.)

(Received the assent of the Governor-General on the 9th September, 1920)

An Act to take power to require passports of persons entering British India

WHEREAS it is expedient to take power to require passports of persons entering [British India]*, It is hereby enacted as follows —

[1 This Act may be called the
Indian Passport Act, 1920

(2) It shall extend to the whole of British India, including British Baluchistan, the Santhal Parganas and the district of Angul †

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

“entry” means entry by water, land or air,

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs, and

“prescribed” means prescribed by rules made under this Act

* In Burma for ‘British India’ read ‘British Burma,’ vide G. B. Order of 1937

† In Burma for section 1, read the following —

“1 This Act may be called the Burma Passport Act” vide G. B. Order of 1937.

any rule made under section 3 prohibiting entry into [British India]* without passport has entered therein and thereupon any [officer of Crown]† shall have all reasonable powers necessary to enforce such direction

THE INDIAN PATENTS AND DESIGNS ACT, 1911.

(ACT NO II OF 1911.)

(Extracts)

Offences

78 If any person uses on his place of business, or on any document issued by him or otherwise the words 'Patent Office,' or any other words suggesting that his place of business is officially connected with, or is, the patent office he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence with further fine of twenty rupees for each day on which the offence is continued after conviction therefor

THE PENAL SERVITUDE ACT, 1855

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- 4 Effect of pardon granted upon condition of Penal Servitude
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- 13 Act not to affect the provisions of certain English Statutes
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- 15 Interpretation clause
- 16 [Repealed]

THE PENAL SERVITUDE ACT, 1855

(ACT NO XXIV OF 1855.)

(Received the Governor General's assent on the 13th August, 1855)

An Act to substitute Penal Servitude for the punishment of transportation in respect of European and American convicts

WHEREAS by reason of the difficulty of providing a place to which Europeans or Americans can with safety to their health be sent for the purpose

undergoing sentences of transportation or of imprisonment for long terms it has become expedient to substitute other punishments for that of transportation † It is enacted as follows

1 § No European or American shall be liable to be sentenced, or ordered by any Court [within 'British India ‡'] to be transported

No European or American to be sentenced to transportation

* In Burma read British Burma, vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words officer of Government

‡ Here certain words which were repealed by Act VII of 1891 have been omitted

§ In s 1 certain words which were repealed by Acts XI of 1874 and XII of 1876 have been omitted

|| Substituted by G I Order of 1937

¶ In Burma the words within brackets have been omitted by G B Order of 1937

Notes.—Only Europeans and Americans are punished with penal servitude 19 M 483, 1 Weir 293

2 Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, [in any part of "British India" *], † be liable to be sentenced or ordered by any such Court, to be transported,

shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years' penal servitude for any term not less than six and not exceeding eight years

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years

Instead of transportation for the term of life, penal servitude for the term of life

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation

3 Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation, but, where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act

4 If any offender sentenced by any Court [within 'British India' *] † to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition

5, 6 and 7 [Power to substitute penal servitude for transportation Mode of dealing with person under sentence of penal servitude Application of enactments respecting transportation and imprisonment with hard labour]—Repealed by Act V of 1871

* Substituted by G I Order of 1937

† In Burma the words within brackets have been omitted by G B Order of 1937.

8 [Removal of convicts under sentence of imprisonment from one prison to another]—*Repealed by Act XII of 1867 and Act X of 1914*

9 10, 11 and 12 [Licences to convicts under sentence of penal servitude to be at large]—*Repealed by Act V of 1871*

13 Nothing in this Act is intended to alter or affect the provisions of the 12 and 13 Victoria, Chapter 43, or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August, 1833, or which may hereafter be passed

14 Any sentence or order upon any person describing him as a European, or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act

Sentence when proof that a person is a European or an American

15 The word "European" as used in this Act shall be understood to include any person usually designated a European British subject *

16 *Repealed by Act XIV of 1870*

THE PETROLEUM ACT, (XXX OF 1934)

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* Repealed by Act 10 of 1914

THE PETROLEUM ACT, 1934

(ACT NO XXX OF 1934)

(Received the assent of the Governor-General on the 6th September, 1934)

An Act to consolidate and amend the law relating to the import transport storage production, refining and blending of petroleum and other inflammable substances

WHEREAS it is expedient to consolidate and amend the law relating to the import, transport, storage, production refining and blending of petroleum and other inflammable substances, It is hereby enacted as follows —

Notes — The Indian Petroleum Act 1899 was passed at a time when the use of petroleum particularly of dangerous petroleum or petrol was limited and with the great developments in the use of petroleum that have taken place in the last 30 years it has become necessary to amend the Act in order to bring it in accordance with the requirements of the Government of India Act, 1919, and to provide for the application of the Act to the provinces of the United Provinces of A. & O. P. and to the Chief Commissioner's Provinces. The Act is hereby amended in accordance with the recommendations of the Committee of Enquiry into the Petroleum Industry in India, and the provisions of the Act are hereby amended in accordance with the recommendations of the Committee of Enquiry into the Petroleum Industry in India.

PRELIMINARY

Short title extent and commencement 1 (1) This Act may be called the Petroleum Act, 1934

[(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas]*

(3) It shall come into force on such date as the [Central Government]† may, by notification in the [official Gazette]‡ appoint

Notes — Owing to the greatly extended use of petroleum it is now advisable that the entire Act should apply to British India* —Statement of Objects and Reasons

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'petroleum means any liquid hydro-carbon or mixture of hydro-carbons, and any inflammable mixture (liquid viscous or solid) containing any liquid hydro carbon,

(b) dangerous petroleum means petroleum having its flashing point below seventy-six degrees Fahrenheit

(c) 'flashing point of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder,

(d) 'to transport petroleum means to move petroleum from one place to another in British India, and includes moving from one place to another in [British India]§ by sea or across territory in India which is not part of [British India] §

* In Burma the words within brackets have been omitted by G. B. Order of 1937.
† In British India the words within brackets have been substituted by G. I. Order of 1937.
‡ Order of 1937.
§ Order of 1937.

(e) "to import" petroleum means to bring it into [British India]* by land, sea, or air, otherwise than during the course of transport ;

(f) "to store" petroleum means to keep it in any one place, but does not include any detention happening during the ordinary course of transport ,

(g) "motor conveyance" means any vehicle, vessel or air-craft for the conveyance of human beings, animals or goods, by land, water or air, in which petroleum is used to generate the motive power ;

(h) "prescribed" means prescribed by rules made under this Act.

Clause (a)—A more technical definition based on the chemical composition of petroleum is given

Clause (b)—The proviso to this definition in the old Act is omitted as being obsolete

Clause (d)—This definition is designed to ensure that petroleum which has started from British India and comes back to British India by sea or across other territory and India shall not be treated as import —*Notes on Clauses*

CHAPTER I.

CONTROL OVER PETROLEUM

Import, transport and storage of petroleum

3 (1) No one shall import, transport or store any petroleum save in accordance with the rules made under section 4

(2) Save in accordance with the conditions of any licence for the purpose which may be required to obtain by rules made under section 4, no one shall import any dangerous petroleum, and no one shall transport or store any petroleum.

Rules for the import transport and storage of petroleum

4 The [Central Government]† may make rules—

(a) prescribing places where petroleum may be imported and prohibiting its import elsewhere ,

(b) regulating the import of petroleum ,

(c) prescribing the period within which licences for the import of dangerous petroleum shall be applied for and providing for the disposal, by confiscation or otherwise, of any dangerous petroleum in respect of which a licence has not been applied for within the *prescribed period or has been refused and which has not been exported*

(d) regulating the transport of petroleum ,

(e) specifying the nature and condition of all receptacles and pipe-lines in which petroleum may be transported ,

(f) regulating the places at which and prescribing the conditions subject to which petroleum may be stored ,

(g) specifying the nature, situation and condition of all receptacles in which petroleum may be stored ,

(h) prescribing the form and conditions of licences for the import of dangerous petroleum, and for the transport or storage of any petroleum, the manner in which applications for such licences shall be

* In Burma for "British India" read "British Burma," vide G. B. Order of 1937.

† In British India the words within brackets have been substituted by G. I. O. of 1937. In Burma for these words read the word "Governor," vide G. B. Order of

made, the authorities which may grant such licences and the fees which may be charged for such licences,

(i) determining in any class of cases whether a licence for the transport of petroleum shall be obtained by the consignor, consignee or carrier,

(j) providing for the granting of combined licences for the import, transport and storage of petroleum or for any two of such purposes,

(k) prescribing the proportion in which any specified poisonous substance may be added to petroleum, and prohibiting the import, transport or storage of petroleum in which the proportion of any specified poisonous substance exceeds the prescribed proportion, and

(l) generally, providing for any matter which in his opinion is expedient for proper control over the import, transport and storage of petroleum

Notes—Sections 3 and 4 provide for control over the import transport and storage of petroleum. It is intended that this should be effective mainly by rules and in addition licences may be required in all cases except in the case of the import of non dangerous petroleum—*Notes on Clauses*

5 (1) No one shall produce refine or blend petroleum save in accordance with the rules made under sub-section (2)

Production, refining and blending of petroleum

(2) The [Central Government]* may make rules—

(a) prescribing the conditions subject to which petroleum may be produced refined or blended, and

(b) regulating the removal of petroleum from places where it is produced, refined or blended and preventing the storage therein and removal therefrom, except as dangerous petroleum, of any petroleum which has not satisfied the prescribed tests †

Notes—Section 5 gives powers to control by rules the production and refining of petroleum—*Notes on Clauses*

6 All receptacles containing dangerous petroleum shall have a stamped embossed, painted or printed warning either on the receptacle itself or, where that is impracticable displayed near the receptacle, exhibiting in conspicuous characters the words "Petrol or "Motor Spirit," or an equivalent warning of the dangerous nature of the petroleum

Receptacles of dangerous petroleum to show a warning

Provided that this section shall not apply to—

(a) any securely stoppered glass, stoneware or metal receptacle of less than two gallons capacity containing dangerous petroleum which is not for sale, or

(b) a tank incorporated in a motor conveyance, or attached to an internal combustion engine, and containing petroleum intended to be used to generate motive power for the motor conveyance or engine or

(c) a pipe line for the transport of petroleum, or

1937 substituted by G I Order of
1937 1934
1937 1934
1937 1934

so far as such provisions relate to the production of petroleum as made under sub-section (2) matters regulated by rules made under section 13 of the Burma Oil Fields Act 1918

(d) any tank which is wholly underground, or

(e) any class of receptacles which the [Central Government]* may, by notification in the [official Gazette]† exempt from the operation of this section

7. Notwithstanding anything contained in this Chapter, a person

No licence needed for small stocks of non dangerous petroleum not in bulk

need not obtain a licence for the transport or storage of non-dangerous petroleum if the total quantity in his possession at any one place does not exceed five

hundred gallons and none of it is contained in a receptacle exceeding two hundred gallons in capacity

Notes—Section 7 imposes the restriction that non dangerous petroleum possessed without licence shall not be in bulk —*Notes on Clauses*

8 (1) Notwithstanding anything contained in this Chapter, a person

No licence needed for small quantities of dangerous petroleum

need not obtain a licence for the import, transport or storage of dangerous petroleum not intended for sale if the total quantity in

his possession does not exceed six gallons

(2) Dangerous petroleum possessed without a licence under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not in the case of receptacles of glass or stoneware exceed one quart in capacity or in the case of receptacles of metal five gallons in capacity

Notes—Section 8 provides for the case of persons who use petrol for cleaning in petrol lamps in automatic lighters etc., it increases for this purpose the limit of dangerous petroleum which may be kept without a licence from three gallons to six and reduces to the same limit the amount which may be imported without a licence —*Notes on Clauses*

9 (1) The owner of a motor conveyance, who complies with

Exemption for motor conveyances, and stationary engines

the requirements of the law for the time being in force relating to the registration and licensing of such conveyance and its

driver or pilot and the owner of any stationary internal combustion engine, shall not be required to obtain a licence—

(a) for the import, transport or storage of any petroleum contained in any fuel tank incorporated in the conveyance or attached to the internal combustion engine, or

(b) for the transport or storage of dangerous petroleum, not exceeding twenty gallons in quantity in addition to any quantity possessed under clause (a)

Provided the petroleum is intended to be used to generate motive power for the motor conveyance or engine

(2) The dangerous petroleum transported or stored without a licence under clause (b) shall be kept as provided in sub-section (2) of section 8, and, if it exceeds six gallons in quantity, shall be stored in an isolated place which does not communicate with any room where any person resides or works or in any room where persons assemble

* In British India the words with a bracket have been substituted by C. I. Act of 1937,

† 1937

Notes—Section 9 contains exemptions specially intended for owners of motor conveyances. Clause (a) exempts petroleum kept in a tank in a motor conveyance from the requirement of a licence. Clause (b) gives the further concession of allowing the owner of a motor conveyance to keep a stock of spare petroleum not exceeding twenty gallons—*Notes on Clauses*

10 Notwithstanding anything contained in this Chapter, a railway administration, as defined in section 3 of the Indian Railways Act, 1890* need not obtain any licence for the import or transport of any petroleum in its possession in its capacity as carrier

Notes—Railway administrations have elaborate rules for the carriage of petroleum by rail and this section proposes to exempt them from the need of taking out of any licence in respect of petroleum in their possession as carriers—*Notes on Clauses*

11 Nothing in this Chapter shall apply to any petroleum which has its flashing point not below two hundred degrees Fahrenheit

12 The [Central Government]† may, by notification in the [official Gazette]‡ exempt any petroleum specified in the notification from all or any of the provisions of this Chapter

13 (1) The [Central Government]† may authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, stored, produced, refined or blended or is under transport, and inspect all receptacles, plant and appliances used in connection with petroleum in order to ascertain if they are in accordance with the provisions of this Chapter and the rules made thereunder

(2) The [Central Government]† may make rules regulating the procedure of officers authorised under this section

CHAPTER II

THE TESTING OF PETROLEUM

14 (1) The [Central Government]† may by notification in the [official Gazette]‡ authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, transported, stored, produced, refined or blended and to inspect and take samples for testing of any petroleum found therein

(2) the [Central Government]† may make rules—
 (a) regulating the taking of samples of petroleum for testing,
 (b) determining the cases in which payment shall be made for the value of samples taken and the mode of payment and
 (c) generally, regulating the procedure of officers exercising powers under this section

Notes—Section 13 relates chiefly to administrative inspections by qualified technical inspectors. Section 14 gives a purely routine power to take samples—*Notes on Clauses*

* 1A of 1890

have been substituted by G. I. Order
 Governor, vide G. B. Order of 1937
 have been substituted by G. I. Order
 Gazette, vide G. B. Order of 1937

15 (1) A standard apparatus for determining the flashing-point of petroleum shall be deposited with an officer to be appointed in this behalf by the [Central Government]* by notification in the [official Gazette]†

Standard Test Apparatus

(2) Such apparatus shall be engraved with the words Standard Test Apparatus and shall be verified and corrected from time to time and replaced when necessary in accordance with rules made under section 21

(3) The Standard Test Apparatus shall on payment of the prescribed fee, be opened to inspection at all reasonable times by any person wishing to inspect it

16 (1) The officer appointed under section 15 shall on payment of the prescribed fee, if any compare with the Standard Test Apparatus any apparatus for determining the flashing point of petroleum which may be submitted to him for this purpose

(2) If any apparatus is found by him to agree with the Standard Test Apparatus within prescribed limits, the officer shall engrave such apparatus with a special number and with the date of the comparison, and shall give a certificate in respect of it in the prescribed form, certifying that on the said date the apparatus was compared with the Standard Test Apparatus and was found to agree with it within the prescribed limits and specifying any corrections to be made in the results of tests carried out with the apparatus

(3) A certificate granted under this section shall be valid for such period as may be prescribed

(4) A certificate granted under this section shall during the period for which it is valid, be proof until the contrary is proved of any matter stated therein

(5) The officer shall keep a register in the prescribed form of all certificates granted by him under this section

17 The [Central Government]* may authorise any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act, or which may have been submitted to him for test by any person, and to grant certificates of the results of such tests

Testing officers

Notes—All tests of petroleum under the Act will be carried out by specially appointed testing officers using certified instruments. Any private enterprise may submit a test apparatus of its own for certification.—*Notes on Clauses*

18 All tests of petroleum made under this Act shall be made with a test apparatus in respect of which there is a valid certificate under section 6 shall have due regard to any correction specified in that certificate and shall be carried out in accordance with rules made under section 21

Manner of test

19 (1) The testing officer after testing samples of petroleum shall make out a certificate in the prescribed form stating whether the petroleum

Certificate of testing

several samples of the same petroleum are tested, and prescribing the variations from standard temperatures which may be allowed,

(h) prescribing the form of certificates of tests of petroleum and the fees which may be charged therefor,

(i) providing, where the results of the testing of samples raise a doubt as to the uniformity of the quality of the petroleum in any lot under test for the division of the lot into sub-lots, and for the selection and testing of samples of each sub-lot and for the averaging of results in accordance with the results of tests of those samples,

(j) prescribing fees for re-tests under section 20 and providing for their refund where the original test was erroneous, and

(k) generally, regulating the procedure of all officers performing duties connected with the testing of petroleum, and providing for any matter incidental to such testing

22 The [Central Government]* may also make rules providing specially for the testing of any form of petroleum which is viscous or solid or contains sediment or thickening ingredients, and such rules may modify or supplement any of the provisions of this Chapter or of the rules made under section 21 in order to adapt them to the special needs of such tests

Special rules for testing viscous or solid forms of petroleum

Notes — Section 22 is designed to enable certain special rules to be made in respect of matters included in the statutory Schedule to the present Act "—Notes on Clauses

CHAPTER III

PENALTIES AND PROCEDURE

General penalty for offences under this Act

23 - (1) Whoever—

(a) in contravention of any of the provisions of Chapter I or of any of the rules made thereunder, imports, transports, stores, produces, refines or blends any petroleum, or

(b) contravenes any rule made under section 4 or section 5, or

(c) breaks the condition of any licence held by him, issued under section 4 or

(d) being for the time being in control or in charge of any place where petroleum is being imported, stored, produced, refined or blended or is under transport, refuses or neglects to show to any officer authorised under section 13 any receptacle, plant or appliance used in such place in connection with petroleum, or in any way obstructs or fails to render reasonable assistance to such officer during an inspection, or

(e) being for the time being in control or in charge of any place where petroleum is being imported, transported, stored produced, refined or blended, refuses or neglects to show to any officer authorised under section 14 any petroleum in such place, or to give him such assistance as he may require for the inspection of such petroleum, or refuses to allow him to take samples of the petroleum, or

(f) being required, under section 27, to give information of an accident, fails to give such information as so required by that section,

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor" rule G. B. Order of 1937.

shall be punishable with fine which may extend to five hundred rupees

(2) If any person, having been convicted of an offence punishable under sub section (1), is again guilty of any offence punishable under that sub section he shall be punishable for every such subsequent offence with fine which may extend to two thousand rupees

Notes — 'Section 24 provides a standard maximum punishment' of one month's imprisonment and a fine of five hundred rupees for contravention, of the Act and rules generally — *Notes on Clauses*

Confiscation of petroleum and receptacles

24 (1) In any case in which an offence under clause (a) or clause (b) or clause (c) of sub-section (1) of section 23

has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is convicted of importing, transporting or storing petroleum exceeding the quantity he is permitted to import transport or store, as the case may be the whole of the petroleum in respect of which the offence was committed, shall, together with the receptacles in which it is contained, be confiscated

(2) This power may also be exercised by the High Court in the exercise of its appellate or revisional powers

25 Offences punishable under this Act shall be triable, [in the Presidency-towns, by a Presidency Magistrate, and elsewhere]* by a Magistrate of the first class, or by a Magistrate of the second class who has been specially empowered by the [Central Government]† in this behalf

Jurisdiction

Notes — Section 25 reproduces the substance of section 18 — *Notes on Clauses*

26 (1) The [Central Government]‡ may, by notification in the [official Gazette],§ authorise any officer by name or by virtue of office to enter and search any place where he has reason to believe that any petroleum is being imported, transported stored, produced, refined or blended otherwise than in accordance with the provisions of this Act and the rules made thereunder and to seize, detain or remove any or all of the petroleum in respect of which in his opinion an offence under this act has been committed

Power of entry and search

(2) The provisions of the Code of Criminal Procedure, 1898,§ relating to searches shall so far as they are applicable, apply to searches by officers authorised under this section

(3) The [Central Government]‡ may make rules regulating the procedure of authorised officers in the exercise of their powers under this section subject however to the provisions of sub section (2)

27 Where any accident with explosion or fire, which is attended with loss of human life or serious injury to person or property, occurs as the result of the ignition of petroleum or petroleum vapour, or occurs in or near any place where petroleum is kept and

Reports of accidents with petroleum

with loss of human life or serious injury to person or property, occurs as the result of the ignition of petroleum or petroleum vapour, or occurs in or near any place where petroleum is kept and

* In Burma the words within brackets have been omitted vide G. B. Order of 1937
 † In British India the words within brackets have been substituted by G. I. Order of 1937
 ‡ In Burma for the words read the word Governor vide G. B. Order of 1937
 § In British India the words within brackets have been substituted by G. I. Order of 1937
 § V of 1898

under circumstances making it likely that it was the result of such ignition the person for the time being in charge of the petroleum shall forthwith give information to the nearest Magistrate or to the officer in charge of the nearest police station

28 (1) The inquiry mentioned in section 176 of the Code of Criminal Procedure, 1898* shall be held in all cases where any person has been killed by an accident which the Magistrate has reason to believe was the result of the ignition of petroleum or petroleum vapour

(2) Any Magistrate empowered to hold an inquest may also hold an inquiry under the said section into the cause of any accident which he has reason to believe was the result of the ignition of petroleum or petroleum vapour if such accident was attended by serious injury to person or property, notwithstanding that no person was killed thereby

(3) For the purposes of this section a Commissioner of Police [in a Presidency town]† shall be deemed to be a Magistrate empowered to hold an inquest

(4) The result of all inquiries held in pursuance of this section shall be submitted as soon as may be to the [Central Government and the Provincial Government] §

Notes—Sections 27 and 28, which are now are based on sections 8 and 9 of the Ind an Explosives Act 1884 but are so drafted as to make them an extension of section 176 of the Code of Criminal Procedure 1898—*Notes on Clauses*

CHAPTER IV

SUPPLEMENTAL

Provisions relating to rules

29 (1) In making any rules under this Act, the [Central Government]§ may—

(a) provide for any matter ancillary to such rules for which in his opinion provision is necessary to protect the public from danger arising from the import transport, storage, production, refining or blending of petroleum and

(b) make special provision for the special circumstances of any [province or]|| place

(2) Every power to make rules conferred by this Act is subject to the condition of previous publication

(3) All rules made under this Act shall be published in the [official Gazette]*

30 (1) The [Central Government]§ may, by notification in the [official Gazette]† apply any or all of the provisions of this Act, and of the rules made thereunder with such modifications

Power to apply Act to other substances

* V of 1898

† In British India certain words after this have been omitted by G I Order of 1937

‡ In Burma for the words within brackets substitute the words 'in Rangoon' vide G I Order of 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

|| In Burma the words within brackets have been omitted by G B Order of 1937

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read Gazette, vide G B Order of 1937

as he may specify to any dangerously inflammable substance, other than an explosive, and thereupon the provisions so applied shall have effect as if such substance had been included in the definition of petroleum

(2) The [Central Government]* may make rules providing specially for the testing of any substance to which any of the provisions of this Act have been applied by notification under sub section (1), and such rules may supplement any of the provisions of Chapter II in order to adapt them to the special needs of such tests

31 Where any enactment confers powers upon any local authority in respect of the transport or storage of petroleum, the [Central Government]* may, by notification in the [official Gazette]†

(a) limit the operation of such enactment or

(b) restrict the exercise of such powers, in any manner he deems fit

Notes.—Section 31 corresponds to section 22 of the Act which enables control to be exercised over inflammable substances like methyl alcohol and carbide of calcium—
Notes on Clauses

[**32** Repealed by Act I of 1938]‡

[The Schedule—Repealed by Act I of 1938]§

THE POISONS ACT, 1919

CONTENTS

PREAMBLE	SECTION
SECTION	
1 Short title and extent	4 Power to regulate possession of any poison in certain areas
2 Power of Provincial Government to regulate possession for sale and sale of any poison	5 Presumption as to specified poisons
3 Power to prohibit importation into British India of any poison except under licence	6 Penalty for unlawful importation etc
	7 Power to issue search warrants
	8 Rules
	9 Savings
	* 10 Repeal of Act I of 1914—Repealed

§ This schedule has not been repealed in Burma There read the schedule as follows —

THE SCHEDULE

ENACTMENTS REPEALED

(See section 32)

Year	Number	Short title	Extent of repeal
1899	VIII	The Indian Petroleum Act 1899	The whole
1914	IV	The Decentralization Act, 1914	So much of the Schedule as relates to the Indian Petroleum Act, 1899

THE POISONS ACT, 1919

(ACT NO XII OF 1919)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 3rd September, 1919)

An Act to consolidate and amend the law relating the importation possession and sale of poisons throughout British India

WHEREAS it is expedient to consolidate and amend the law regulating the importation possession and sale of poisons throughout [British India]*, It is hereby enacted as follows —

Short title and extent 1 (1) This Act may be called the Poisons Act 1919

[(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas]†

2 (1) The [Provincial Government]‡ may by rule regulate within the whole or any part of [the territories under its administration]§ the possession for sale and the sale, whether wholesale or retail, of any specified poison

Power of the Provincial Government to regulate possession for sale and sale of any poison

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for—

(a) the grant of licences to possess any specified poison for sale, wholesale or retail and the fixing of the fee (if any) to be charged for such licences

(b) the classes of persons to whom alone such licences may be granted

(c) the classes of persons to whom alone any such poison may be sold

(d) the maximum quantity of any such poison which may be sold to any one person

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers and the inspection of the same

(f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale, and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor

Notes—Where the sale is prohibited an offence is caused even where a person sells through an agent *The Pharmaceutical Society v London* (1880) 5 App Cas 657 *Pharmaceutical Society v Ash* (1911) 1 K B 520 C A The seller means a person who keeps the shop and has power to regulate the sale *Templeman v Trafford* (1881) 51 L J M C 4 An agent who takes order is not a seller *Pharmaceutical Society v White* (1901) 1 K B 601 C A

* In Burma read British Burma for British India vide G B Order of 1937

3 The [Central Government]* may by notification in the [official Gazette]† prohibit, except under and in accordance with the conditions of a licence the importation into [British India]‡ of [across any customs frontier defined by the

Power to prohibit importation into British India of any poison except under licence

Central Government]§ any specified poison, and may by rule regulate the grant of licences

Notes—By this section importation of poison is prohibited

4 (1) The [Provincial Government]* may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable

Power to regulate possession of any poison in certain areas

(2) In making any rule under sub-section (1) the [Provincial Government]* may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both together with confiscation of the poison in respect of which the breach has been committed and of the vessels, packages or coverings in which the same is found

Presumption as to specified poisons

5 Any substance specified as a poison in a rule made or notification issued under this Act shall be deemed to be a poison for the purposes of this Act

Penalty for unlawful importation etc

6 (1) Whoever—

(a) commits a breach of any rule made under section 2, or

(b) imports without a licence [into British India across a customs frontier defined by the Central Government]§ any poison the importation of which is for the time being restricted under section 3, or

(c) breaks any condition of a licence for the importation of any poison granted to him under section 3, shall be punishable—

(i) on a first conviction with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

(2) Any poison in respect of which an offence has been committed

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†
1937

§
of 1937 In Burma omit these words

n substituted by G I Order of
G B Order of 1937
substituted by G I Order of
B Order of 1937
† vide G B Order of 1937
been inserted by G I Order

under this section, together with the vessels, packages or covering in which the same is found, shall be liable to confiscation

7 (1) The District Magistrate, [the Sub-Divisional Magistrate and, in a Presidency-town, the Commissioner of Police],* may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule thereunder, or that any poison liable to confiscation under this Act is kept or concealed

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provisions of the Code of Criminal Procedure, 1898,† relating to search-warrants shall, as far as may be, be deemed to apply to the execution of the warrant

8 (1) In addition to any other power to make rules hereinbefore conferred, [the Provincial Government]‡ may make rules generally to carry out the purposes and objects of this Act

(2) Every power to make rules conferred by this Act [except section 3],§ shall be subject to the condition of the rules being made after previous publication

(3) All rules made by [the Central Government or by the [Provincial Government]‡ under this Act shall be published in the official Gazette] and on such publication shall have effect as if enacted in this Act ¶

9 (1) Nothing in this Act or any licence granted or rule made thereunder shall extend to or interfere with anything done in good faith in the exercise of his profession as such by a medical or veterinary practitioner

(2) Notwithstanding anything hereinbefore contained, the [Provincial Government may],** by general or special order declare that all or any of the provisions of this Act [except section 3]§ shall be deemed not to apply to any article or class of articles of commerce specified in such order or to any poison or class of poisons used for any purpose so specified

(3) The authority on which any power to make rules under this Act is conferred may by general or special order either wholly or partially—

(a) exempt from the operation of any such rules or

* The words within brackets have been omitted in Burma by G B Order of 1937

† Act V of 1898

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word the Governor, vide G B Order of 1937

** In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words 'Governor may, vide G B Order of 1937

(b) exclude from the scope of the exemption provided by sub-section (1)

any persons or class of persons either generally or in respect of any poison specified in the order

10 [Repeal of Act 1 of 1904] *Repealed by Act XII of 1927*

THE POLICE ACT (V OF 1861)

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THE POLICE ACT, 1861.

(ACT NO V OF 1861.)

(Received the Governor-General's assent on the 22nd March, 1861)

An Act for the Regulation of Police

WHEREAS it is expedient to re-organise the police, and to make it a more efficient instrument for the prevention and detention of crime, It is enacted as follows —

Preamble

The Police Act, 1861 — This short title was given by Act 14 of 1897

Application — This Act has been declared in force in the Santhal Parganas, by Reg 3 of 1897, District by Reg 3 of 1913 in the Arakan Hill District by Act 13 of 1893 and in

1 The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction that is to say,—

Interpretation-clause

The words "Magistrate of the District" shall mean the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled

The word 'Magistrate' shall include all persons within the general police district exercising all or any of the powers of a Magistrate.

The word 'police' shall include all persons who shall be enrolled under this Act

[The words "general police-district" shall embrace any presidency, province or place or any part of any presidency, province, or place, in which this Act shall be ordered to take effect.]*

The words 'District Superintendent' and 'District Superintendent of Police' shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any District

The word 'property' shall include any moveable property, money, or valuable security

The word 'person' shall include a Company or Corporation

The word "month" shall mean a calendar month

The word 'cattle' shall, besides horned cattle, include elephants, camels, horses asses, mules, sheep, goats and swine

['References to the subordinate ranks of a police force shall be construed as references to members of that force below the rank of Deputy Superintendent.]†

Legislative changes — The definition of District Superintendent and District Superintendent of Police has been inserted by Act 8 of 1895. Certain words after the definition of property having been repealed by Act 10 of 1914 have been omitted

* In Burma for the words within brackets read the following words —

The words 'general police district' shall mean British Burma except any place to which this Act does not extend

† In British India the words within quotations have been inserted by G. I. Order 1907. In Burma omit these words

[2 The entire police establishment under a [Provincial Government]* shall, for the purpose of this Act, be deemed to be one police-force, and

Constitution of the force

shall be formally enrolled, and shall consist of such number of officers and men and shall be constituted in such manner† as shall from time to time, be ordered by the [Provincial Government]* "Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the Provincial Government"†§

Legislative changes —The words within first quotations have been inserted by Act 38 of 1920 The word control has been substituted by Act 4 of 1914

Application —This section has been repealed in the former Province of Bengal by Bengal Police Act 7 of 1899

||3 The superintendence of the police throughout a general

Superintendence in the Provincial Government

police district shall vest in, and,† shall be exercised by the [Provincial Government]* to which such district is subordinate, and

except as authorised under the provisions of this Act, no person, officer, or Court, shall be empowered by the [Provincial Government]* to† supersede, or control any police functionary

Legislative changes —The words within quotations have been inserted by Act 39 of 1920

4 The administration of the police throughout a general police-

Inspector General of Police etc

district shall be vested in an officer to be styled the Inspector General of Police, and

in such Deputy Inspectors General and Assistant Inspectors-General as to the [Provincial Government]* shall seem fit

The Administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction* of such Magistrate be vested in a District Superintendent and such Assistant District Superintendents as the [Provincial Government]* shall consider necessary

N. A. " " "

on are vested powers of general control and prosecution under s 125 (1) (a)

complaint to the police 6 P R 1910

L R 1910 A police officer can be

prosecuted under s 500 I P C for making a false and malicious report against a person 5 Ind Cas 714

Calcutta —In the town of Calcutta the administration of the police vests in the Commissioner of Police, (Sec 4 of Bengal Act IV of 1866) and in the suburbs the Inspector General of Police for Bengal is precluded from exercising any of the powers and authorities vested in him by this Act Sec 9 of Bengal Acts IV of 1884

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be one police force, and shall be formally enrolled and shall consist of such number of officers and men, and shall be constituted in such manner and the members of such force shall receive such pay as shall from time to time be ordered by

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police district shall
rank of Assistant
a Act 1935
order of 1937

5 The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district but shall exercise those powers subject to such limitation as may from time to time be imposed by the [Provincial Government]*

Power of Inspector General
Exercise of powers

Inspector General—An Inspector-General of police is a Magistrate under this section and as such a false complaint to him is punishable under s 211 I P Code 9 P W R 1908 Cr L J 291

6 [Magisterial powers of police officers—*Repealed by the Code of Criminal Procedure 1882 (Act X of 1882)*]

7 [Subject to such rules as the Provincial Government from time to time make under this Act the Inspector General, Assistant Inspectors-General and District Superintendent or Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks]† whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same

Appointment dismissal etc of
inferior officers

“or may award any one or more of the following punishments to any police-officer [of the subordinate ranks]‡ who shall discharge his duty in a careless or negligent manner or who by any act of his own, shall render himself unfit, for the discharge thereof namely—

(a) fine to any amount not exceeding one month's pay,

(b) confinement to quarters for a term not exceeding fifteen days, with or without punishment, drill, extra guard, fatigue, or other duty,

(c) deprivation of good-conduct pay

(d) removal from any office of distinction or special emolument

Legislative changes—The words within quotations have been substituted by Act 8 of 1895 s 2

Notes—An order for the suspen

This
Act
of his

Certificates to police officers

annexed to this Act under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint by virtue of which

* Substituted in British India by C I Order of 1937 In Burma read for these words the word Governor vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of

mentioned in section 4 of this
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rules as aforesaid at any time

dismiss suspend or reduce any police officer”

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma omit these words

§ In British India the words within brackets have been substituted by G I O 1937 In Burma for these words read the words so appointed

the person holding such certificate shall be vested with the powers, functions, and privileges of a police-officer.

'Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same

"A police-officer shall not, by reason of being suspended from office cease to be a police-officer. During the term of such suspension, the powers, functions, and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been suspended."

Legislative changes—The last two sections have been substituted by Act 8 of 1895, s 3

Notes.—*Vide* 10 C W N 127, 10 A L J 459

9 No police-officer shall be at liberty to withdraw himself from the duties of the office unless expressly allowed to do so by the District Superintendent, or by some other officer authorised to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing for a period of not less than two months, of his intention to resign

Notes—*"*to him and was reinstated. Held that the

casual leave granted. After trial he was tried and convicted. J 213 see also 20

Cr. L J. 575=52 Ind Cas 63

10 No police-officer shall engage in any employment of office whatever, other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General

Notes—The conduct of a police officer carrying on a shop is subject matter of enquiry within this section and therefore he is liable to be punished under s 168 I P C. The words "any employment or office whatever" in this section are wide enough to cover the case of a police officer who is engaged in trade. 43 Ind Cas 140=19 Cr L J 152

11. [*Police Superannuation Fund—Repealed by Act XVI of 1874*]

12 The Inspector General of Police may, from time to time, subject to the approval of the [Provincial] Government, make rules relative to the

organisation, classification, the places at which the members of the force shall reside, and the particular services to be performed by them, their inspection, the description of arms, accoutrements, and other necessities to be furnished to them, the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Governor,' *vide* G D. Order of 1937.

Notes — Vide 15 C 194

13 It shall be lawful for the Inspector General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof to depute any additional number of police-officers to keep the peace at any place within the general police-district and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application.

Provided that it shall be lawful for the person on whose application such deputation shall have been made on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector General or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn, and such person shall be relieved from the charge of such additional force from the expiration of such notice.

Magistrate — A Magistrate has no power to realise the cost of a constable from any person. 1 W R Cr 15 18 C W N 12*2=15 Cr L T 703

14 Whenever any railway, canal, and other public work, or any manufactory or commercial concern shall be carried on, or be in operation in any part of the country and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector General with the consent of the [Provincial Government],* to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

15 (1) It shall be lawful for the [Provincial Government]* by proclamation to be notified in the official Gazette, and in such other manner as the [Provincial Government]* shall direct to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or, that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorised by the [Provincial Government]* in this behalf with the sanction of the [Provincial Government],* to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

* In British India the words within brackets have been substituted by G I Ord 1937. In Burma for these words read 'Governor' vide G B Order of 1937.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same, and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the magistrate's judgment of the respective means within such area of such inhabitants

(5) It shall be lawful for the [Provincial Government]* by order to exempt any persons or class or section of such inhabitants, from liability to bear any portion of such cost

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the [Provincial Government]* may in each case think fit to direct

Explanation—For the purposes of this section, 'inhabitants' shall include persons who themselves, or by their agents or servants, occupy or hold land or other immoveable property within such area, and landlords who themselves, or by their agents or servants collect rents direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein

Notes—The High Court has no power to interfere with an order of a purely executive nature as when a Magistrate appointed special constable under s 17, Act V of 1861 instead of proceeding under s 15 to apply for sanction to an increase to the police force 18 W R Cr 67 As regards clause (4) *vide* 17 C W N 915=17 C L J 216

Legislative changes—This section has been substituted by Act 8 of 1895, section 4

15A (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to property has been caused by, or has ensued from the misconduct of the inhabitants of such area, or any class

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land

or section of them it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct, to make, within one month from the date of the injury, or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district, or of the sub-division of a district within which such area is situated

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the [Provincial Government],* after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

(a) declare the persons to whom injury has been caused by, or has ensued from, such misconduct,

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them, and

* In British India the words with brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor,' *vide* G B Order of 1937

(c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub section

Provided that the Magistrate shall not make any declaration or assessment under this sub section, unless he is of opinion that such injury as aforesaid had arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury

(3) It shall be lawful for the [Provincial Government] * by order, to exempt any persons, or class or section of such inhabitants, from liability to pay any portion of such compensation

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub section (2) shall be subject to revision by (the Commissioner of the Division or) † the [Provincial Government] * but, save as aforesaid, shall be final

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section

(6) *Explanation*—In this section the word 'inhabitants' shall have the same meaning as in the last preceding section

Legislative changes—This section has been inserted by Act 8 of 1895 s 5

16 (1) All moneys payable under sections 13 14 15 and 15A, shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure 1882 for the recovery of fines or by suit in any competent Court †

Recovery of moneys payable under sections 13 14 15 and 15A and disposal of same when recovered

(3) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section

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1935 Pat 214 (S B)

17 When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place or may be reasonably apprehended and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred or is apprehended, it shall be lawful for any police officer, not below the rank of inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officers may require to act as special police-officers for such time and within such limits as he shall deem necessary and the Magistrate to whom such

Special police officers

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application is made shall, unless he sees cause to the contrary, comply with the application.

Special Constable—The circumstances which justify the appointment of a special constable under the section are that a disturbance of the peace is apprehended and that the police force available is inefficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. In the absence of these circumstances an order under this section is improper and a person should not be convicted for disobeying such an order. 35 C 454=12 O W N 806=7 Cr L J 186, 12 O W N 727. Where it is not clear that there is any danger of a disturbance of the peace or that, if there is

officer to the police station for obtaining the authority of appointment to serve as special constables and the necessary badges and arms, does not constitute an offence under s 190. 28 C 411=5 O W N 131, but see 43 Ind C 185=19 Cr L J 91. Where the members of a party to a ferry dispute were appointed as special constables but no instructions for the performance of any kind of police duty were issued to them and they tended to employ them as police-officers, refusing to serve as special constables

considering that an order by a Magistrate refused to interfere, on the ground that L App 4=18 W R Cr 67

as as special constables
Code 20 O C 219
act as special police-

18 Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Section 29—The provisions of s 29 are not intended to apply to special constables and cannot be interpreted as so applying by the operation of the provisions of this section 10 O W N, 322

19 If any person, being appointed a special police-officer as aforesaid shall without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

Notes—Vide notes under s 17.

20 Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

Notes—This section and the last part of s 14 of the Code of Criminal Procedure preclude police-officer from exercising authority as Magistrate U B R (1892 1896) Vol I 10

21 Nothing in this Act shall affect any hereditary or other village police-officer, unless such officer shall be enrolled as police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other

village police-officer shall be enrolled without his consent and the consent of those who have the right of nomination

If any police-officer appointed under Act XX of 1856 (to make better provisions for the appointment and maintenance of police-chaukidars in Cities, Towns, Stations Suburbs, and Bazzars in the Presidency of Fort William in Bengal) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district

Police officers always on duty and may be employed in any part of district.

22 Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may, at any time, be employed as a police-officer

in any part of the general police-district

23 It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists and it shall be lawful for every police-officers, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters

ound to arrest a that he has not purchase bamboos A W N 1871 requiring a sub

ordinate officer to make a search of a house is not an order lawfully issued A I R 1935 Nag 237 This sect on gives wider powers to police officers to prevent offences in general 8 L B R 329=17 Cr L J 317 Section 23 prescribes the duties of a police officer and one of the duties mentioned is to collect and communicate intelligence affecting public peace 125 Ind Cas 379

24 It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence

Legislative changes—Certain words at the end of this section repealed by Act 10 of 1882, have been omitted

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It may, in certain cases be treated as a complaint 1 L B R 28

Police officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal

25 It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district

Timber—Timber claimed by a land owner as having been washed on to his estate by a river is not unclaimed property within the meaning of this section 9 W R 97

26 (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation

(2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section

Legislative changes—Sub section (2) has been added by Act 8 of 1895 s 7, vide 6 L B R 57=13 Cr L J 568=15 Ind Cis 981

27 (1) If no person shall within the period allowed claim such property, or the proceeds thereof, if sold, it may if not already sold under sub section (2) of the last preceding section, be sold under the orders of the Magistrate of the district

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of [the Provincial]* Government

Legislative changes—This section has been substituted by Act VIII of 1895

28 Every person having ceased to be an enrolled police officer under this Act, who shall not forthwith deliver up his certificate and the clothing, accoutrements, appointments and other necessities which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees or to imprisonment with or without hard labour, for a period not exceeding six months or to both

29 Every police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, "or who being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave," or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both

Legislative changes—The words within quotations have been inserted by Act 8 of 1895 s 9

Scope—This section is not applicable to any one who is not a police officer 10 C L R 521 A suspended police officer ceases to be a police officer 10 A 452. 8 B L R App 58 This section deals with offences constituted either by any violation of duty, or wilful breach or neglect of any rule or regulation or lawful order made by competent

* In British India the words within brackets have been inserted by G I Order of 1937 In Burma omit these words

authority on the part of a police officer. Any neglect of duty short of a violation of duty does not amount to an offence under the section 12 C 472 30 Cr L J 635--116 Ind Cas 611. The word violation of duty implies something more than mere omission to perform a duty 29 P L R 30=107 Ind Cas 771. This section is an exceedingly stringent provision of the law which should not be put in force except in extreme cases.

In case of two distinct acts of omission, acquittal for one act of omission does not debar trial for other act of omission. A I R 1933 Pat 670.

A police officer not performing a fiducial duty in pursuance of the order of his superior officer can be punished under this section 19 Ind Cas 831. The expression 'police

servants' no matter what their rank are concerned as accused persons 9 Ind Cas 831.

Lawful order—The words lawful order do not cover extra drill given by a District Superintendent of Police to his constables for failing to cut down the jungle in the vicinity 12 C 472.

The acts or omissions punishable under this section come within the category of 'offence punishable under any law other than the Indian Penal Code' and those offences likewise fall within the terms of s 148 of the same Code 25 W R Cr.

Refusal by a constable to attend drill ordered by a Head Constable is an offence under this section. A W N 1896 105.

An offence under this section is not a cognizable offence. U B R (1897 1896) Vol I, 295. Overstaying the leave by a constable without permission is not punishable under this section 6 C 325—8 C L R 56, G A 495=A W N 1884 215.

Deputing subordinate to the place where a crime has been committed where such deputing is authorised is not an offence under this section 1 Agra Cr 1.

Submission of report of a local inspection by a police-officer incorrectly and negligently drawn up is an offence under this section 15 W R Cr 17.

Before the police officer can be convicted of an offence under s 29 it must be found that he is guilty not of mere neglect but of deliberate and intentional neglect of duty. Where therefore there is not even a mere neglect on his part an offence under this section is not made out 108 Ind Cas 200 28 Cr L J 664=A I R 1927 Oudh 257. A

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Jurisdiction—A Deputy Magistrate vested with the full powers of the District Magistrate can try an offence under this section 4 W R Cr 2. A Cantonment Magistrate has power to try offence under this section even without complaint 1 Agra Cr 24. A Sessions Judge has no power to try offences under this section 1 W R Cr 5 9 W R Cr 86. This section does not vest jurisdiction over a Magistrate to try a European British subject 3 N W P 123. A District Magistrate can try a case under this section where offence has been committed by a member of a reserve force 22 A 310.

In a summary trial of an offence under this section it is not sufficient to state that it consisted in the absence from special constables parade on certain dates without permission, but it is necessary to state that the act consisted of a breach of duty lawfully imposed and to specify how the duty was created and in what act or omission the breach consisted 10 C W N 79=2 C L J 565—3 Cr L J 178.

There is no express power given to the Government to make rules for the Government of Police to make rules for the abuse or neglect of duty. Therefore it has the effect that constables are to be within the lines at 9 p.m. is not an offence under s 29 of the Act 15 C 191.

Any person aggrieved by the acts of police officers can prefer a charge under this section without the sanction of the Government or other competent authority and without any previous notice in writing as required by s 42 that section being applicable only to civil actions 2 P R 1868 Cr.

A person can be convicted under this section even though the facts proved do not
Cr 55

be somewhat severely punished

L B R (1872 1892), 150

village he has not visited, does not thereby commit the offence of forgery But the facts were however, held to amount to an offence under this section U B R (1197 1902) Vol I, 356 An offence falling under the Police Act, and also under the Indian Penal Code should be punished under the latter enactment 11 P R 1874 Cr

A police constable cannot be convicted under this section, where an under trial prisoner escapes from his custody during removal from one place to another and where he follows the procedure generally adopted in such cases 9 O & A L R 928

A police officer forced to remain within building is not guilty of cowardice 112 Ind Cas 99=26 Cr I, J 979

A police officer who on the expiration of his leave was really ill and was treated by

of his own should not be convicted under this section 25 O W N 408

30 (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which and the times at which such processions may pass

Regulation of Public assemblies and processions and licensing of same

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form, a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require, by general or special notice, that the persons convening or collecting such assembly, or directing or promoting such procession shall apply for a licence

(3) On such application being made, he may issue a licence specifying the names of the licensees, and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to this section

Provided that no fees shall be charged on the application for, or grant of any such licence

(4) He may also regulate the extent to which music may be used
Music in the streets in the streets on the occasion of festivals and ceremonies

Legislative changes — This section has been substituted by Act 1 of 1895, s 10

occasion for it has passed
wer Police Superintendent to
r notice requiring convenors
procession against police order

Clause (2)—It is the applicant for the licence alone to whom the licence can be

This section empowers the authorities to control processions and the manner in which they are to be controlled, if it is necessary to control them is set forth in sub section (2). Neither in the marginal note nor in the body of the section, is any express power given to the authorities absolutely to forbid the taking out of a procession. A I R 1935 All 657=1935 A L J 386-36 Cr L J 782=155 Ind Cas 605. A license was given to certain persons under s 30 to take out a procession. The procession was led by the Order had been given by the Additional District faster while passing a mosque. The order met cused with the result that a riot took place. icted under s 32 for refusing to obey an order passed by a competent authority. A I R 1938 Lah 495.

Clause (4)—The District Superintendent of Police is authorised to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies, but a prohibition of every kind of music is not covered by the word "regulate". 15 A 485=27 A L J 183.

30A. (1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a licence granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub section shall be deemed to be an unlawful assembly.

Scope—This section authorises the police to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. Neither s 30 nor s 31 empowers the police to issue a general order prohibiting any singing in the streets at night. L B R (1893 1900) 394. see also 29 A 569=1 W N 1907 171=6 Cr L sue a general notification

is of licence 49 Ind Cas
" But the police have no
ower to control does not
take out his procession
uant himself with the
he licence has been issued
to prosecution for breach
763
tioned to stop a licensed
not excuse a licensee from
1923 Pat 106

31. It shall be the duty of the police to keep order on the public roads and in the public streets thoroughfares, ghats, and landing places and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and on the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat, or landing place be thronged, or may be liable to be obstructed.

Police to keep order in public roads, etc

Scope—This section is intended primarily for the purpose of keeping order on the public road preventing confusion, regulating traffic and avoiding obstruction. Order passed in such cases would be well covered by the provisions of this section. A police an objection raised by the High Caste be carried empty 163 Ind C's 866= 186 All 534 Neither s 30 nor s 31

night L B R (1893 1900), 391 Under the purpose of keeping order in the public

An order issued under s 31 may be trol of the public at any place of

police have no right to their duties 1935 A M L J 1

32 Every person opposing or not obeying the orders issued under the last "three" preceding sections, or violating the conditions of any licence granted by the District Superintendent or Assistant District Superintendent of Police for the issue of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees

Legislative changes—The word three has been substituted for the word "two" by Act 8 of 1894

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L J 473

33 Nothing in the last 'four' preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Legislative changes—The word 'four' has been substituted for the word 'three' by Act 8 of 1894 s 12

34 Any person who, on any road or in any 'open place or street or thoroughfare with the limits of any town to which this section shall be especially extended by the [Provincial Government],* commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment "with

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor," vide G B Order of 1937.

or without hard labour not exceeding eight days and it shall be lawful for any police officer to take into custody without a warrant, any person who within his view commits any of such offences namely

First—Any person who slaughters any cattle or cleans any carcass any person who rides or drives any cattle recklessly or furiously or trains or breaks any horse or other cattle

Slaughtering cattle furiously riding etc

Cruelty to animals

Second—Any person who wantonly or cruelly beats abuses or tortures any animal

Third—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public

Obstructing passengers

Exposing goods for sale

Fourth—Any person who exposes any goods for sale

Fifth—Any person who throws or lays down any dirt, filth rubbish or any stones or building materials or who constructs any cow-shed stable or the like or who causes any offensive matter to run from any house factory, dung heap or the like

Throwing dirt into street

Being found drunk or riotous

Sixth—Any person who is found drunk or riotous, or who is incapable of taking care of himself

Seventh—Any person who wilfully and indecently exposes his person or any offensive deformity or disease or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose

Indecent exposure of person

Eighth—any person who neglects to fence in or duly to protect any well tank or other dangerous place or structure

Neglect to protect dangerous places

Legislative changes—The words open place or have been inserted by Act 8 of 1895 The words residents or passengers have been substituted by Act 8 of 1895 The words *with or without hard labour* have been inserted by Act 1 of 1903

Placing *tamba* in a public thoroughfare is an offence under this section 2 N W P 5

Scope—Before a person can be convicted under this section it must be established that the act complained of was to the obstruction inconvenience annoyance or danger or damage of the residents or passenger 9 Pat 97 Ordinary members of procession cannot be convicted under s 30 (2) A I R 1933 Cal 353

throughfare
by Act
amendment
used must
The inten
who would
passengers
e residents
of the Act

To drive an *ekka* with six persons besides the accused is not an offence under this

section 28 P R 1835 Cr Placing a board in front of one's house over the water channel and a considerable roadway leaving a small space by which persons could pass by his house is not an offence under this section 4 A L J 44 = A W N 1906 317 Where idol is taken by 4 or 5 men to be immersed in river it is no process on 21 Cr L J 482

A municipal bazar though it is not a street or a road is possibly a thoroughfare, and a riot committed in the bazar comes under this section U B R (1892 1896) Vol I 26

Where the accused was tried under this section and he was subsequently acquitted he cannot claim compensation under s 250 Cr P Code A W N 1901 142

Clause (2)—Using of horses with *forsets* sores from which matter is running is an offence under this section in as much as such user is cruel and it is likely to be productive of damage and risk to the public and will cause annoyance to any person who sees them being driven A W N 1887 67

Clause (4)—The expression expose for sale in sub section (4) implies that any person who takes out of it has to pay for it Where the servant of a person sets up a board in a public place and keeps a jar filled with water so that anybody can take water from it he cannot be convicted under this sub section 92 Ind Cas 591 27 Cr L J 303

Clause (5)—The construction of a shed for the purpose of selling goods cannot be held to be an offence under cl 5 of this section such a shed not being of the nature of a cow shed stable or the like to which the law refers A W N 1881 61

Clause (6)—The word riotous is sufficiently wide to cover the case of a person who

than Penal
50 of 1876
even once
be convicted
amb t of

Imprisonment—An imprisonment under this section must be simple L B R (1872 1892) 434 U B R (1897 1901) Vol I 3rd Imprisonment in default of

ction 92 Ind Cas 589 27
Magistrate that the accused
and log cally means that the
272 of the Indian Penal Code
1925 All 448

Jurisdiction

35 Any charge against a police officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate

Legislative changes—Certain words at the beginning of the para have been omitted by Act X of 1882

36 Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act

Proviso

Provided that no person shall be punished twice for the same offence

37* The provisions of sections 64 to 70, both inclusive of the Indian Penal Code and of sections 386 to 389, both inclusive of the Code of Criminal Procedure 1882 with respect to fines shall apply to penalties and fines imposed under this Act on conviction before a Magistrate

* This section has been substituted for the original s 37 and for ss 38 39 and 40 by the Police Act (1861) Amendment Act (VIII of 1895) s 14

Provided that, notwithstanding anything contained in section 65 of the first mentioned Code any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days

38 [*Procedure until return is made to warrant of distress*] Repealed—See the Police Act (1861), Amendment Act (VIII of 1895), s 14

39. [*Imprisonment if distress not sufficient*].—Repealed—See the Police Act (1861), Amendment Act (VIII of 1895), s 14

40 [*Levy of fines from European British subjects*] Repealed—See the Police Act (1861), Amendment Act (VIII of 1895), s 14

41 Repealed by G 1 Order of 1937 *

42 All actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise † and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action ,

No plaintiff shall recover in any such action if tender of sufficient amend shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial is held shall certify his approbation of the action

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act

Scope —The prosecutions referred to in this section are for acts done or purporting to

not acts
see also
Nag 237
P 237
S W R
offence,
within the
Where

a suit has been brought against police officer for damages for something done in the exercise of his powers under Cr I ro Code This section does not apply A I R 1930 All 742
Action means civil action and notice of criminal prosecution is not required A I R 1931 Nag 205=80 N L R 318

* In Burma read the following section 41 —

All sums paid for the service of process by police-officers and all rewards forfeitures and penalties or shares of rewards forfeitures and penalties which by law are payable to informers shall when the information is laid by a police-officer form part of the revenues of Burma

† So much of s 42 as relates to the limitation of suits has been repealed by the Indian Limitation Act (IX of 1971) As regards the effect of such repeal vide A I R 1970 All 742

43 When any action or prosecution shall be brought, or any proceedings held against any police officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate

Plea that act was done under warrant

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section

Proviso

44 It shall be the duty of every officer in charge of a police station to keep a general diary in such form as shall, from time to time, be prescribed by the [Provincial Government],* and to record therein all complaints and charges preferred the names of all persons arrested the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise and the names of the witnesses who shall have been examined

The Magistrate of the district shall be at liberty to call for and inspect such diary

45 The [Provincial Government]* may direct the submission of such returns by the Inspector-General and other police-officers as to such [Provincial Government]* shall seem proper, and may prescribe the form in which such returns shall be made

Provincial Government may prescribe form of returns

46 (1) This act shall not by its own operation take effect in any presidency, province, or place But the [Provincial Government]* by an order to be published in the [official Gazette]† may extend the whole or any part of this Act to any presidency, province, or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province or place

(2) When the whole or any part of this Act shall have been so extended, the [Provincial Government]* may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act,

(b) to prescribe the time manner, and conditions within and under which claims for compensation under section 15A are to be

dency-town, the Central Government may, by notification in the official Gazette, create a special police-district embracing parts of two or more Provinces and extend to every part of the said district the powers and jurisdiction of members of a police force belonging to any part of British India specified in the notification

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police force shall have within every part of any Province of which any part is included in the said district the powers duties, privileges and liabilities which, as police-officers, they have in their own Province

(3) Any member of the said police force whom the Central Government shall generally or specially empower to act under this sub-section may, subject to any orders which the Central Government may make in this behalf exercise within any Province any part of which is included in the said district any of the powers of the officer in charge of a police-station in that Province and when so exercising any such powers shall subject to any such order as aforesaid be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station

(4) A part of a Province included in the said district shall not by reason of that inclusion cease, for the purposes of any enactment relating to police to be part of that Province]*

3 Notwithstanding anything in [any of the Acts mentioned or

Employment of police officers beyond the presidency province, or place to which they belong

referred to in the last foregoing section]† but subject to any orders which the [Central Government]‡ may make in this behalf, a member of the [police force]§ of any [province]|| may discharge the

functions of a police officer in [any part of British India beyond the limits of the presidency province or place]¶ and shall while so discharging such functions be deemed to be a member of the police-establishment of [that part]** and be vested with the powers functions and privileges, and be subject to the liabilities of a police officer belonging to [that police-force]††

Notes—Victoria Terminus is included in the Bombay City 34 Bom L R 1926
Railway police have all powers of general police A I R 1933 Bom 256 as also
A I R 1933 Bom 63

* In Burma for the words within brackets read any other part of British Burma vide G B Order of 1937
† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words other establishment vide G B Order of 1937
‡ In Burma for the words within brackets substitute that other part, vide G B Order of 1937
§ of 1937
|| Order of 1937
¶ G I Order of 1937
** vide G B Order of 1937
†† G I Order of 1937

*[4 Nothing in this Act shall be deemed to enable the police of one Province to exercise powers and jurisdiction in any area within another Province not being a railway area without the consent of the Government of that other Province]

Consent of Provincial Government to exercise of powers and jurisdiction

THE POLICE (INCITEMENT TO DISAFFECTION) ACT (XXII OF 1922).

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- 2 Definition
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SECTION

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THE POLICE (INCITEMENT TO DISAFFECTION) ACT, 1922

(ACT NO. XXII OF 1922)

(Received the assent of the Governor-General on the 5th October, 1922)

An Act to provide a penalty for spreading disaffection among the police and for kindred offences

WHEREAS it is expedient to penalise the spreading of disaffection among the police and other kindred offences, It is hereby enacted as follows —

imprisonment for three months

* In British India section 4 has been substituted by G. I. Order of 1937. In Burma this section is not in force.

It has not been shown that the efficacy of this provision has ever been tested and found deficient to cope with the education of members of the police force. It seems to me that a portion of clause 3 is therefore redundant

" "

publish it

Short title,* extent and commencement

1 (1) This Act may be called the Police (Incitement to Disaffection) Act 1922

[(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas]*

(3) It shall come into force in any province or part of a province on such date as the Local Government may, by notification in the local official Gazette direct

Notes—It came into force in Burma from the 26th November, 1922, vide Burma Gazette 1922 Pt I p 1057

2 In this Act, the expression "member of a police-force" means
Definition any person appointed or enrolled for the performance of police duties under any enactment specified in the Schedule

3 Whoever intentionally causes or attempts to cause, or does
Penalty for causing disaffection etc any act which he knows is likely to cause disaffection towards His Majesty or the Government established by law in [British India or British Burma]*†† amongst the members of a police-force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of a police force, to withhold his services or to commit a breach of discipline shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both

Explanation—Expressions of disapprobation of the measures of the Government with a view to obtain their alteration by lawful means or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection

Notes—We have made some amendments in this clause which are calculated to put it beyond doubt that the clause in the first place is only aimed at persons acting with intent to commit the offence constituted by the clause and in the second place does not penalise any action taken bona fide to procure in a lawful manner the absence from duty or resignation of a police man for the purpose of bettering his prospects or otherwise as furthering his welfare —Report of the Select Committee

Saving of acts done by police associations and other persons for certain purposes

4 Nothing shall be deemed to be an offence under this Act which is done in good faith—

(a) for the purpose of promoting the welfare or interests of any member of a police-force by inducing him to withhold his services in any manner authorised by law or

(b) by or on behalf of any association formed for the purpose of furthering the interests of members of a police-force as such, where the association has been authorised or recognised by the Government

and the act done is done under any rules or articles of the association which have been approved by the Government

5 No Court shall proceed to the trial of any offence under this Act except with the previous sanction, or on the complaint, of the District Magistrate, or, in the case of [a Presidency-town]* of the Commissioner of Police

Sanction to trial of offences by subordinate Courts

Notes — We have added two clauses (Ss 4 and 5) the first of which specifically saves for unstriated election

Committee

6 (1) No Court inferior to that of a [Presidency Magistrate or]† Magistrate of the first class shall try any offence under this Act

Trial of cases

(2) Notwithstanding anything contained in Chapter XXII of Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily

THE SCHEDULE

(See Section 6)

Year	No	Short Title
<i>Acts of the Governor General in Council</i>		
1859	XXIV	The Madras District Police Act 1859
1861	V	The Police Act 1861
1887	XV	The Burma Military Police Act 1887
1888	III	The Police Act 1888
1892	V	The Bengal Military Police Act 1892
		<i>Madras Act</i>
1888	III	The Madras City Police Act 1888
		<i>Bombay Acts</i>
1890	IV	The Bombay District Police Act 1890
1902	IV	The City of Bombay Police Act 1902
		<i>Bengal Acts</i>
1866	II	The Calcutta Suburban Police Act 1866
	IV	The Calcutta Police Act 1866
1890	III	The Calcutta Port Act 1890
1920	II	The Eastern Frontier Rifles (Bengal Battalion) Act 1920
		<i>Burma Act</i>
1899	IV	The Rangoon Police Act 1899
		<i>Assam Act</i>
1920	I	The Assam Rifles Act 1920
1888	II	

* In British India certain words after this repealed by G. I. Order of 1937, omitted. In Burma for these words read the words the town of Rangoon Order of 1937

† In Burma the within brackets have been omitted by G. B. I.

THE INDIAN POST OFFICE ACT (VI OF 1898)

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THE INDIAN POST OFFICE ACT, 1898

(ACT NO VI OF 1898)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 22nd March, 1898)

[An act to consolidate and amend the law relating to the Post Office in India]

WHEREAS it is expedient to consolidate and amend the law relating to the Post office in India, It is hereby enacted as follows—]•

* In Burma title and preamble have been omitted by G. B. Order of 1937

CHAPTER I

PRELIMINARY

Short title extent application
and commencement

*[1 (1) This Act may be called
the Indian Post office Act, 1898]

(2) It extends to the whole of British India, inclusive of† British Baluchistan, the Santhal Parganas, and the Pargana of Spiti, and it applies also to—

(a) all Native Indian subjects of Her Majesty in any place within and beyond British India,

(b) all other British subjects within the territories of any Native Prince or Chief in India and

(c) all servants of the Queen, whether British subjects or not, within the territories of any native Prince or Chief in India

(3) It shall come into force on the first day of July, 1898]

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression 'Director-General' means the Director-General of 'Posts and Telegraphs' ‡

(b) the expression 'inland,' used in relation to a postal article, means—

(i) posted in [British India]§ and addressed to any place in [British India]§ or to any place for which a post office is established by the [Central Government or the Crown Representative]|| beyond the limits of [British India]§, or

(ii) posted at any post office established by the [Central Government or the Crown Representative]|| beyond the limits of [British India]§ and addressed to any place for which any such post office is established, or to any place of [British India]§

"Provided that the expression inland shall not apply to any class of postal articles which may be specified in this behalf by the [Central Government]|| by notification in the [official Gazette]¶ when posted in or at or addressed to any places or post offices which may be described in such notification **

(c) the expression 'mail bag' includes a bag, box, parcel, or any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article

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1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

** The words within quotations have been added by Act II of 1903

3 I Order of
r of 1937

(d) the expression 'mail ship' means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of [India]* or Her Majesty's Government, or the Government of any British possession or foreign country

(e) the expression 'officer of the post office' includes any person employed in any business of the post office or on behalf of the post office

(f) the expression 'postage' means the duty chargeable for the transmission by post of postal articles

(g) the expression 'postage stamp' means any stamp provided by the [Central Government]† for denoting postage or other fees or sums payable in respect of postal articles under this Act and includes adhesive postage stamps and stamps printed embossed impressed, or otherwise indicated on any envelope, wrapper, post-card or other article

(h) the expression 'post-office' includes every house, building, room carriage, or place used for the purposes of the post office and every letter-box provided by the post office for the reception of postal articles

(i) the expression 'postal article' includes a letter postcard, newspaper, book, pattern or sample packet parcel, and every article or thing, transmissible by post

(j) the expression 'Post-Master-General' includes a Deputy Post-Master-General or other officer exercising the powers of a Post-Master-General‡ and

[(k) the expression 'the Post Office' means the department established for the purpose of carrying the provisions of this Act into effect and § presided over by the Director-General

Meanings of 'in course of transmission by post and delivery

3 For the purposes of this Act,—

(a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII

(b) the delivery of a postal article of any description to a postman or other person authorised to receive postal articles of that description for the post shall be deemed to be a delivery to a post office and

(c) the delivery of a postal article at the house or office of the addressee, or to the addressee, or his servant or agent or other person the article according to the rules to the addressee, shall be

Notes —Letters found lying in K/ola and made over to Post Master are in course of transmission 1930 Cr C 564 A I R 1930 Lah 400

* In Burma for India read Burma and for British India read British Burma vide G B Order of 1937

† In British India the words within brackets have been substituted by G B Order of 1937 In Burma for these words read the word 'Governor,' vide G B Order of 1937

‡ In Burma clause (j) has been omitted by G B Order of 1937

§ The words within quotations have been added by Act 14 of 1914

CHAPTER II

PRIVILEGE AND PROTECTION OF THE GOVERNMENT

4 (1) Whenever within [British India]* posts or postal communications are established by the [Central Government]† shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving collecting sending, despatching, and delivering all letters, except in the following cases, that is to say —

Exclusive privilege of conveying letters reserved to the Government

(a) letters sent by a private friend in his way, journey, or travel, to be delivered by him to the person to whom they are directed, without hire, reward, or other profit or advantage for receiving carrying, or delivering them,

(b) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose, and

(c) letters solely concerning goods or property, sent either by sea or by land to be delivered with the goods or property which the letters concerned, without hire, reward, or other profit or advantage for receiving carrying, or delivering them

Provided that nothing in this section shall authorise any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post

(2) For the purposes of this section and section 5, the expression "letters" includes postcards

Clause (b) — *Vide Circular Delivery Co v Clare* (1869) 20 L T 701

5 Wherever within [British India]* posts or postal communications are established by the [Central Government],† the following persons are expressly forbidden to collect, carry tender or deliver letters, or to receive letters for the purpose of carrying or delivering them although they obtain no hire, reward or other profit or advantage for so doing that is to say —

Certain persons expressly forbidden to convey letters

(a) common carriers of passengers or goods, and their servants or agents except as regards letters solely concerning goods in their carts or carriages, and

(b) owners and masters of vessels sailing or passing on any river or canal in [British India],* or between any ports or places in [British India]* and their servants or agents except as regards letters solely concerning goods on board and except as regards postal articles received for conveyance under Chapter VIII

Notes — *Vide Bennett v Clough* 1 B & Ald 461

* In Burma for the words British India read 'British Burma' vide G B Order of 1937

† In British India the words within brackets have been substituted by G B Order of 1937 In Burma for these words read the word Governor, vide G B Order of 1937

6 [The Crown]* shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the [Central Government]† as hereinafter provided, and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery delay or damage, unless he has caused the same fraudulently or by his wilful act or default

Notes—Where a V P with a torn label reached the Dead Letter Office and was subsequently sold the Government is bound to pay damages to the sender 46 A 455

CHAPTER III

POSTAGE

7 (1) The [Central Government]‡ may by notification in the [official Gazette]‡ fix the rates of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms, and conditions subject to which the rates so fixed shall be charged —

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule

(2) Unless and until such notification as aforesaid is issued, the rates set forth in the said schedule shall be the rates chargeable under this Act

(3) The [Central Government]‡ may by notification in the [official Gazette]‡ declare what packets may be sent by the inland post as book, pattern, and sample packets within the meaning of this Act

Notes—Postage means the duty chargeable for the transmission of postal packets vide English Post Office Act 1908 (8 Edw 7, c 48) s 89 In England the Treasury may, within certain limits by warrant fix the rates of postage

8 The [Central Government]‡ may, by rule,—

(a) require the prepayment of postage on inland postal articles or any class of inland postal articles and prescribe the manner in which prepayment shall be made

(b) prescribe the postage to be charged on inland postal articles when the postage is not prepaid or is insufficiently prepaid

(c) provide for the re-direction of postal articles and the transmission by post of articles so re-directed, either free of charge or subject to such further charge as may be specified in the rules, and

* In British India the words within brackets have been substituted by the word Government

† In British India the words within brackets have been substituted by the word Governor

‡ In British India the words within brackets have been substituted by the word Government

1937 In Burma for these words read the word Government

(d) prescribe the fees to be charged for the "express delivery of postal articles, in addition to, or instead of, any other postage chargeable thereon under this Act

Explanation.—'Express delivery' means delivery by a special messenger or conveyance

9 (1) The [Central Government]* may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers

Power to make rules as to registered newspapers

(2) For the purpose of such registration, every publication consisting wholly or in great part, of political or other news or of articles relating thereto, or to other current topics with or without advertisements shall be deemed a newspaper, subject to the following conditions, namely —

(a) that it is published in numbers at intervals of not more than thirty-one days, and

(b) that it has a *bona fide* list of subscribers

(3) An extra or supplement to a newspaper, bearing the same date as the newspaper, and transmitted therewith, shall be deemed to be part of the newspaper

Provided that no such extra or supplement shall be so deemed unless it consists, wholly or in great part, of matter like that of the newspaper, and has the title and date of publication of the newspaper, printed at the top of each page

Explanation —Nothing in this section or in the rules thereunder shall be construed to render it compulsory to send newspapers by the inland post

Notes —A Treasury warrant may also fix special rates and regulations for the transmission by post of postal packets consisting of books and papers impressed for the case of the blind —*Fide Haisbury Vol. LXII p. 638*

10 (1) Where arrangements are in force with the United Kingdom or with any British possession or foreign country, for the transmission by post of postal articles between [British India]† and the United Kingdom or such possession or country, the [Central Government]* may, in conformity with the provisions of such arrangements declare what postage rates and other sums shall be charged in respect of such postal articles and may make rules as to the scale of weight, terms and conditions subject to which the rates so declared shall be charged.

(2) Unless and until such declaration as aforesaid is made, the existing rates and regulations shall continue in force

11 (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor *vide* G. I. Order of 1937.

† In Burma for British India read the words British Burma *vide* G. I. Order of 1937.

Provided that, if any such postal article appears to the satisfaction of the [Post Master General] * to have been maliciously sent for the purpose of annoying the addressee he may remit the postage

(2) If any postal article on which postage or any other sum chargeable under this Act is due is refused or returned as aforesaid or if the addressee is dead or cannot be found then the sender shall be bound to pay the postage or sum due thereon under this Act

Notes — Vide English Post Office Act 1903 (8 Edw 7 C 48) s 3 (1) 3 (2) and s (3)

12 If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the Post Office may, after notice in writing, recover the same from him as if it were a fine imposed under this Act by any Magistrate having jurisdiction over that person may for the time being be resident, and the [Post Master General] * may further direct that any other postal article not being on Her Majesty's Service addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid

Recovery of postage and other sums due in respect of postal articles

cation made authorised in

order of the [Post Master General] * be recovered for the use of the Post Office from the person so refusing as if it were a fine imposed under this Act by any Magistrate having jurisdiction over that person may for the time being be resident, and the [Post Master General] * may further direct that any other postal article not being on Her Majesty's Service addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid

Notes —
1908 in
to His Ma
Halsbury s

the Post Office Act,
as any duties granted
recoverable by law —

13 When a postal article on which any duty of customs is payable, has been received by post from any place beyond the limits of [British India] * and the duty has been paid by the postal authorities at any customs port or elsewhere the amount of the duty shall be recoverable as if it were postage due under this Act

Post office marks *prima facie* evidence of certain facts de noted

14 In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article —

(a) the production of the postal article having thereon the official mark of the Post Office denoting that the article has been refused or that the addressee is dead or cannot be found shall be *prima facie* evidence of the fact so denoted and

(b) the person from whom the postal article purports to have come shall, until the contrary is proved be deemed to be the sender thereof

Notes — This section corresponds to section 8 (1) of the English Post Office Act 1903 (9 Edw 7 c 48)

15 The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the post office of [British India] * or to the post office of the United Kingdom shall be evidence of the amount of postage due

Official marks to be evidence of amount of postage

postage or other sum is due in respect thereof to the post office of [British India] * or to the post office of the United

* In Burma for Post Master General read Director General and for British India read British Burma vide C B Order of 1937

Kingdom or of any British possession or foreign country shall be *prima facie* evidence that the sum denoted as aforesaid is so due

Notes — *Vide* s 9 of the English Post Office Act 1908 (8 Edw 7 c 48)

CHAPTER IV

POSTAGE STAMPS

16 (1) The [Central Government]* shall cause postage stamps to be provided of such kinds and denoting such values as he may think necessary for the purposes of this Act

Provision of postage stamps and power to make rules as to them

(2) The [Central Government]* may make rules as to the supply sale and use of postage stamps

(3) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) fix the price at which postage stamps shall be sold

(b) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act

(c) prescribe the conditions with regard to perforation defacement and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums

(d) regulate the custody supply and sale of postage stamps

(e) declare the persons by whom and the terms and conditions subject to which postage stamps may be sold and

(f) prescribe the duties and remuneration of persons selling postage stamps

17 † (1) Postage stamps provided under section 16 shall be deemed to be stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code ‡ and subject to the other provisions of this Act, shall be used for the prepayment of postage or other sums chargeable under this Act in respect of postal articles except where the [Central Government]* directs that prepayment shall be made in some other way

Postage stamps to be deemed to be stamps for the purpose of revenue

(2) Where the [Central Government]* has directed that prepayment of postage or other sums chargeable under this Act in respect of postal articles may be made by prepaying the value denoted by the impressions of stamping machines issued under his authority the impression of any such machine shall likewise be deemed to be a stamp issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code †

* In British India the words within brackets have been substituted by G. I. Ord. of 1937. In Burma for these words read the word Governor & de G. B. Order of 1937.

† Section 17 has been re-numbered as section 17 (1) and a sub-section (2) has been added by Act 16 of 1944.

‡ Act LV of 1860.

CHAPTER V

CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES

18 (1) The [Central Government]* may, by rule, provide for the re-delivery to the sender, without reference to the consent of the addressee and subject to such conditions (if any) as may be deemed fit, of any postal article in course of transmission by post

(2) Save as provided by any rules that may be made under subsection (1), the sender shall not be entitled to recall a postal article in course of transmission by post

Notes—In practice letters and parcels are always returned by post free of charge when the sender's name and address can be ascertained *Re Steriers Trust* (1912) W N 149

19 (1) Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby no person shall send by post any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office

(2) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office

Transmission by post of any thing indecent, etc prohibited

20 No person shall send by post—

(a) any indecent or obscene printing painting photograph, lithograph, engraving book or card or any other indecent or obscene article, or

(b) any postal article having thereon or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous threatening or grossly offensive character

Notes—The circulation by post of postcard containing an obscene advertisement is an offence under s 61 33 C 247=2 Cr L J 201 see *R v De Manney* (1907) 1 K B 388 An apparatus suggesting obscenity is indecent for the purpose of this section 31 P R 129

Power to make rules as to transmission by post of postal articles

21† (1) The [Central Government]* may make rules as to the transmission of articles by post

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) specify articles which may not be transmitted by post,

(b) prescribe conditions on which articles may be transmitted by post,

(c) provide for the detention and disposal of articles in course of transmission by post in contravention of rules made under clause (a) or clause (b),

* In British India the words within brackets have been substituted by G O order of 1937 In Burma for these words read the word Governor vide G O Order of 1937

† Section 21 (1) and (2) have been substituted by Act III of 1912

(a) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates, and

(e) regulate covers, forms, dimensions, maximum weights and enclosures, and the use of postal articles, other than letters, for making communications."

(3) Postal articles shall be posted and delivered at such times and in such manner as the Director General may, by order, from time to time appoint

Notes—Under s 21 (1) the Governor General in Council may make rules specifying articles which may not be transmitted by post 31 P L R 129=A I R, 1930 Lah 552

22 (1) Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern or sample packets and parcels, or any of them, such packets or parcels, or any of them, may, subject to such rules as the [Central Government]* may make in this behalf, be detained in the Post Office so long as may be necessary

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for that purposes

23 (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the [Central Government]* may, by rule, direct

(2) Any officer in charge of a post office or authorised by the [Post-Master-General]† in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of "section 20, clause (a) or of † section 21, or of any of the provisions of this Act relating to postage

(3) Notwithstanding anything in sub-section (1) —

(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the [Post-Master-General],† if necessary, be opened and destroyed, and

"(b) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the [Central Government]* may by rule direct"†

24 "Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force,"† or anything liable to duty is received for delivery at a post

Power to deal with postal articles containing goods contraband or liable to duty

1937

† of 1937

Order of 1937
G B Order

‡ The words within quotations have been substituted by Act III of 1913

office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article.

Provided, first, that, if the Director-General so directs in the case of any post office or class of post offices, the officer in charge of the post office shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent.

Provided secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the [Post-Master-General]*†

Notes—In England the Post Master General may detain any postal packet suspected to contain any contraband goods and forward the packet to the Commissioners of His Majesty's customs.

24A ‡ "The [Central Government]§ may, by general or special order, empower any officer of the post-office, specified in such order, to deliver any postal article, received from beyond

Power to deliver such articles to Customs authority

the limits of [British India]|| and suspected to contain anything liable to duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878,¶ or of any other law for the time being in force.

25 Where a notification has been published under section 19 of the Sea Customs Act, 1878¶, in respect

Power to intercept notified goods during transmission by post

of any specified description, "or where the import or export into or from [British India]|| of goods of any suspected description has been prohibited or restricted by or under any other enactment for the time being in force"*** any officer of the post-office empowered in this behalf by the [Central Government]§ may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver "all postal articles reasonably believed or found to contain such goods †† to such officer as the [Central Government]§ may appoint in this behalf, and such goods may be disposed of in such manner as the [Central Government]§ may direct.

"In carrying out any such search, such officer of the post office may open or unfasten, or cause to be opened or unfastened, any

* Certain words after this repealed by Act 15 of 1921 have been omitted.

† In Burma for the words within brackets read Director General, vide G B Order of 1937.

‡ Section 21A has been added by Act 15 of 1921.

§ In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word Governor, vide G B Order of 1937.

|| In Burma for the words 'British India' read 'British Burma' vide G B Order of 1937.

¶ Act V III of 1878.

*** The words quoted have been inserted by Act II of 1930.

†† The words within " " have been substituted or added by Act III of

(a) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates, and

(e) regulate covers, forms, dimensions, maximum weights and enclosures, and the use of postal articles, other than letters, for making communications "

(3) Postal articles shall be posted and delivered at such times and in such manner as the Director-General may, by order, from time to time appoint

Notes—Under s 21 (1) the Governor General in Council may make rules specifying articles which may not be transmitted by post 81 P L R 129=A I R, 1930 Lah 552

22 (1) Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern or sample packets and parcels, or any of them, such packets or parcels, or any of them, may, subject to such rules as the [Central Government]* may make in this behalf, be detained in the Post Office so long as may be necessary

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for that purposes

23 (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the [Central Government]* may by rule direct

Power to deal with postal articles posted in contravention of Act, office or authorised by the [Post-Office] may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of "section 20, clause (a) or of † section 21, or of any of the provisions of this Act relating to postage

(3) Notwithstanding anything in sub-section (1) —
(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the [Post-Master-General],† if necessary, be opened and destroyed, and

"(b) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the [Central Government]* may by rule direct †

24 "Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force,"† or anything liable to duty is received for delivery at a post

Power to deal with postal articles containing goods contraband or liable to duty

Order of 1937
B Order

† The words within quotations have been substituted by Act III of 1912.

office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article :

Provided, first, that, if the Director-General so directs in the case of any post office or class of post offices, the officer in charge of the post office shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent .

Provided, secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the [Post-Master-General]*†

Notes—In England the Post Master General may detain any postal packet suspected to contain any contraband goods and forward the packet to the Commissioners of His Majesty's customs

24A † "The [Central Government]§ may, by general or special order, empower any officer of the post-office, specified in such order, to deliver any postal article, received from beyond

Power to deliver such articles to Customs authority

the limits of [British India]|| and suspected to contain anything liable to duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878,¶ or of any other law for the time being in force

25 Where a notification has been published under section 19 of the Sea Customs Act, 1878¶, in respect of any specified description, "or where the import or export into or from [British India]|| of goods of any suspected description has been prohibited or restricted by or under any other enactment for the time being in force"**, any officer of the post-office empowered in this behalf by the [Central Government]§ may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver "all postal articles reasonably believed or found to contain such goods"†† to such officer as the [Central Government]§ may appoint in this behalf, and such goods may be disposed of in such manner as the [Central Government]§ may direct.

"In carrying out any such search, such officer of the post office may open or unfasten, or cause to be opened or unfastened, any

* Certain words after this, repealed by Act 15 of 1921, have been omitted

† In Burma for the words within brackets read "Director General," vide G. B. Order of 1937.

‡ Section 21A has been added by Act 15 of 1921

§ 1937. . . . substituted by G. I. Order of 1937
|| 1937. . . . vide G. B. Order of 1937
|| 1937. . . . vide G. B. Order of 1937.

¶ Act VIII of 1878

** The words quoted have been inserted by Act II of 1930

†† The words within quotations have been substituted or added by Act III of 1912.

newspaper or any book pattern or sample packet in course of transmission by post" *

26 (1) On the occurrence of any public emergency, or in the interest of the public safety or tranquility, the [Central Government or a Provincial Government]† or any officer specially authorised in this behalf by the [Central or the Provincial Government]† may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or "shall be disposed of in such manner as the authority issuing the order may direct" *

(2) If any doubt arises as to the existence of a public emergency or as to whether any act done under sub-section (1) was in the interests of the public safety or tranquillity, a certificate [of the Central Government or, as the case may be, of the Provincial Government]† shall be conclusive proof on the point

27 (1) Where a postal article is received by post from any place beyond the limits of [British India]§—

a) bearing a fictitious postage stamp, that is to say, any facsimile or imitation or representation of a postage stamp, or

(b) purporting to be prepaid with any postage stamp which has been previously used to prepay any other postal article,

the officer in charge of the post office at which the postal article is received, shall send a notice to the addressee inviting him to attend either in person or by agent, within a specified time at the post office to receive delivery of the postal article

(2) If the addressee or his agent attends at the post office within the time specified in the notice, and consents to make known to the officer in charge of the post office the name and address of the sender of the postal article and to redeliver to the officer aforesaid the portion of the postal article which bears the address and the fictitious or previously used postage stamp or, if the postal article is inseparable from the stamp the entire postal article, the postal article shall be delivered to the addressee or his agent

(3) If the addressee or his agent fails to attend at the post-office within the time specified in the notice or, having attended within that time refuses to make known the name and address of the sender, or to redeliver the postal article or portion thereof as required by sub-section (2), the postal article shall not be delivered to him, but shall be disposed of in such manner as the [Central Government]† may direct

Explanation—For the purposes of this section, the expression 'postage stamp' includes any postage stamp for denoting any rate or

of 1937
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C I Order
stary to the
G B Order

duty of postage of any part of Her Majesty's dominions, or of any [Indian State]* or foreign country, "and the impression of any stamping machine provided or authorised for the like purpose by or under the authority of the Government of such part, State or country"†

27A ‡ No newspaper printed and published in [British India]§ without conforming to the rules laid down in the Press and Registration of Books Act, 1867 shall be transmitted by post

Prohibition of transmission by post of certain newspapers

27B ‡ (1) Any officer of the post office authorised by the [Post-Master-general]§ in this behalf may detain any postal article in course of transmission by post which he suspects to contain—

Power to detain newspapers and other articles being transmitted by post

(a) (i) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(ii) any document,

containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124 A of the Indian Penal Code, or

(b) any newspaper as defined in the Press and Registration of Books Act, 1867, edited, printed or published otherwise than in conformity with the rules laid down in that Act,

and shall deliver any postal article so detained to such officer as the [Provincial Government]|| may appoint in this behalf

(2) Any officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention

(3) The [Provincial Government]|| shall cause the contents of any postal article detained under sub-section (1) to be examined, and, if it appears to the [Provincial Government]|| that the article contained in any newspaper, book or other document, of the nature described in clause (a) or clause (b) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force

Provided that any person interested in any article detained under
in two months
Government]||
nment]|| shall
consider such application and pass such orders thereon as it may
deem to be proper

Provided also that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application apply to the High Court for release of the article and its

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words "State in India or Burma" vide G. I. Order of 1937.

contents on the ground that the article did not contain any newspaper, book or other document containing any seditious matter

(4) In this section "document" includes also any painting drawing or photograph, or other visible representation

27C* Every application made under the second proviso to sub-section (3) of section 27B shall be heard and determined in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898, by a special bench of the High Court constituted in the manner provided by section 99C of that code

Procedure for disposal by High Court of applications for release of newspapers and articles so detained

27D* No order passed or action taken under section 27B shall be called in question in any Court otherwise than in accordance with the second proviso to sub section (3) of that section

Jurisdiction barred

CHAPTER VI

REGISTRATION, INSURANCE, AND VALUE PAYABLE POST

28 The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the post office at which it is posted, and require a receipt therefor, and the [Central Government] may by notification in the [official Gazette],† require postage chargeable under this Act, such the notification shall be paid on account of the registration of postal articles

Registration of postal articles
Power to make rules as to registration

29 (1) The [Central Government]† may make rules as to the registration of postal articles

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) declare in what cases registration shall be required
(b) prescribe the manner in which the fees for registration shall be paid and
(c) direct that twice the fee for the registration shall be levied on the delivery of a postal article required to be registered on which the fee for registration has not been prepaid

(3) Postal articles made over to the post office for the purpose of being registered shall be delivered when registered at such times and in such manner as the Director General may, by order, from time to time appoint

Insurance of postal articles
30 The [Central Government]† may by notification in the [official Gazette]† direct—

(a) that any postal article may, subject to the other provisions of this Act be insured at the post office at which it is posted against

the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it, and

(b) that in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the insurance of postal articles

31. The [Central Government]* may, by notification in the [official Gazette]† declare in what cases, insurance shall be required, and direct that any postal article containing anything required to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the [Central Government or the Secretary of State]‡ in respect of the postal article

32 (1) The [Central Government]* may make rules as to the insurance of postal articles

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) declare what classes of postal articles may be insured under section 30

(b) fix the limit of the amount for which postal articles may be insured and

(c) prescribe the manner in which the fees for insurance shall be paid

(3) Postal articles made over to the Post Office for the purpose of being insured shall be delivered, when insured at such places and times, and in such manner as the Director General may, by order, from time to time appoint

33 Subject to such conditions and restrictions as the [Central Government]* may, by rule, prescribe the [Central Government]§ shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

1937
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1937 In Burma for these words read Secretary of State or the Government vide G
Order of 1937

§ In British India the words within brackets have been substituted by G I O
1937 In Burma for these words read the word Government, vide G B Order

34 The [Central Government]* may by notification in the [official

Transmission by post of value
payable postal articles

Gazette]† direct that subject to the other provisions of this Act, and to the payment of fees at such rates as may be fixed

by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum so recovered shall be paid to the sender

Provided that [neither the Central Government nor the Secretary of State shall]‡ incur any liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee

Explanation —Postal articles sent in accordance with the provisions of this section may be described as value payable postal articles

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Power to make rules as to
value payable postal articles

35 (1) The [Central Government]* may make rules as to the transmission by post of value payable postal articles

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) declare what classes of postal articles may be sent as value payable postal articles

(b) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a *bona fide* order received by him

(c) limit the value to be recovered on the delivery of any value payable postal article §

(d) prescribe the form of declaration to be made by the senders of value payable postal articles and the time and manner of the payment of fees

(e) provide for the retention and repayment to the addressee in cases of fraud of money recovered on the delivery of any value payable postal article and

(f) prescribe the fees to be charged for inquiries into complaints regarding the delivery of or payment for value payable postal articles ||

(3) Postal articles shall be made over to the Post Office for the purpose of being sent as value payable and shall be delivered when so sent at such times and in such manner as the Director General may by order from time to time appoint

(4) No suit or other legal proceeding shall be instituted against the [Central Government the Secretary of State]¶ or any officer of

G I Order
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rule G B

the Post Office in respect of anything done, or in good faith purporting to be done under any rule made under clause (c) of sub-section 2 *

36 (1) Where arrangements are in force with the United Kingdom or with any British possession, [Indian State]† or foreign country for the transmission by post of registered, insured or value-payable postal articles between [British India]‡ and the United Kingdom or such possession State or country, the [Central Government]§ may make rules to give effect to such arrangements

(2) In particular and without prejudice to the generality of the foregoing power such rules may prescribe—

(a) the form of declaration to be made by the senders of such postal articles as aforesaid and

(b) the fees to be charged in respect thereof

CHAPTER VII

UNDELIVERED POSTAL ARTICLES

37 (1) The [Central Government]§ may make rules as to the disposal of postal articles which for any reason cannot be delivered (hereinafter referred to as undelivered postal articles)

(2) In particular and without prejudice to the generality of the foregoing power such rules may —

(a) prescribe the period during which undelivered postal articles at a post office shall remain in that office and

(b) provide for the publication of lists of undelivered postal articles, or of any class of undelivered postal articles

(3) Every undelivered postal article after being detained at a post office for the period prescribed by rule under the foregoing provisions of this section shall be either forwarded, free of further charge to the post office at which it was posted, for return to the sender, or sent to the office of the [Post Master General] ‡

38 (1) Every postal article received at the office of the [Post-Master General] ‡ under sub section (3) of section 37 shall be dealt with as follows —

(a) if practicable, it shall be re directed and forwarded by post to the addressee, or

(b) if it cannot be re directed and forwarded as aforesaid, it shall be opened by some officer appointed by the [Post-Master-General] ‡ in this behalf and bound to secrecy, in order to ascertain the name and address of the sender

* The words with n quotations have been inserted by Act III of 1912

† In British India the words with n brackets have been substituted by G I Order of 1937 In Burma for these words read the words State in India or Burma vide G B Order of 1937

‡ In Burma for British India read British Burma and for Post Master General read Director General vide G B Order of 1937

§ In British India the words with n brackets have been substituted by G I Order of 1937 In Burma for these words the word Governor vide G B Order of 1937

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge or subject to such further charge as the [Central Government]* may, by rule, direct

39 Undelivered postal articles which cannot be disposed of

Final disposal of undelivered postal articles under the foregoing provisions, shall be detained in the office of the [Post-Master-General]† for such further period (if any), and shall be dealt with in such manner, as the [Central Government]* may, by rule, direct

Provided that—

(a) letters and postcards shall be destroyed,

(b) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the office of the [Post-Master-General]† and, if on the expiration of that period, no person has established his right thereto, shall, if money, be credited to the Post Office, and, if saleable property, be sold, the sale-proceeds being credited to the Post Office

CHAPTER VIII

SHIP LETTERS.

40 The master of a ship, not being a mail ship, about to depart from any port in [British India]† to any port within, or any port or place beyond, shall

Duty of master of ship, departing from any port in British India and not being a mail ship, to convey mail bags,

receive on board any mail bag [British India]† shall receive on board any mail bag tendered to him by any officer of the post office for conveyance, granting a receipt therefor in such form as the [Central Government]* may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination

41 (1) The master of a ship arriving at any port in [British India]† shall, without delay, cause every

Duty of master of ship arriving at any port in British India in respect of postal articles and mail bags on board

postal article or mail bag on board which is directed to that port and is within the exclusive privilege conferred on the [Central Government]* by section 4 to be

delivered either at the post office at that port or to some officer of the Post Office authorized in this behalf by the [Post-Master-General]†

(2) If there is on board any postal article or mail bag which is directed to any other place within [British India]† and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge of the post office at the port of arrival and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag

42 The [Central Government]* may by notification in the [official Gazette] † declare what gratuities shall be allowed to masters of ships, not being mail ships in respect of postal articles received by them for conveyance on behalf of the Post Office ; and the master of a ship not being a mail ship, about to leave any port in [British India]‡ as aforesaid shall, if he receives on board a mail bag for conveyance be entitled to demand and obtain immediately the amount of the gratuity payable under this section in respect of the mail bag and its contents

CHAPTER IX

MONEY ORDERS

43 (1) The [Central Government]* may provide for the remitting of small sums of money through the Post Office by means of money orders and may make rules as to such money orders

Power to maintain money order system and to make rules as to remittances thereby

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the limit of amount for which money orders may be issued ,

(b) the period during which money orders shall remain current and

(c) the rates of commission or the fees to be charged on money orders or in respect thereof

Notes.—This section corresponds to section 23 of the English Post Office Act (8 Edw 7 C 48)

44 (1) Subject to such conditions as the [Central Government]* may be rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters a person remitting money through the Post Office by means of a money order may require that the amount of the order if not paid to the payee be repaid to him or be paid to such person other than the original payee as he may direct

Power for remitter to recall money order or alter name of payee

(2) If neither the payee nor the remitter of a money order can be found and if within the period of one year from the date of the issue of the order no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government

45 The [Central Government]* may authorise the issue in such form as may be suitable, of money orders, to be called postal orders or by such other designation as may be deemed appropriate, for certain fixed amounts and may make rules as to the rates of commission to be charged thereon and the manner in which and conditions subject to which they may be issued, paid and cancelled

Power to provide for the issue of postal orders

Provided that no such order shall be issued for an amount in excess of ten rupees

Notes—In England postal orders are considered as money orders for a prescribed amount not exceeding 21s. *Vide* Post Office Act 1908 (8) Edw 7 C 84 s 24 (i)

46 (1) Where arrangements are in force with the United Kingdom or with any British possession [Indian State]* or foreign country, for the issue and payment through the Post Office of money orders between [British India]† and the United Kingdom or such possession, State, or country the [Central Government]‡ may make rules to give effect to such arrangements

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the manner in which, and the conditions subject to which such orders may be issued and paid in [British India]†, and

(b) the rates of commission to be charged thereon

47 If any person, without reasonable excuse the burden of proving which shall lie on him, neglects or refuses to refund—

(a) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof or

(b) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the Post Office authorised by the [Post Master General]‡ in this behalf from the person so neglecting or refusing as if it were an arrear of land revenue due from him

48 No suit or other legal proceedings shall be instituted against [the Crown]§ or any officer of the Post Office in respect of—

(a) anything done under any rules made by the [Central Government]‡ under this Chapter or

(b) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee provided that as regards incomplete information there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee, or

(c) the payment of any money order being refused or delayed by, or on account of any accidental neglect omission or mistake by or on the part of an officer of the Post Office or for any other cause whatsoever other than the fraud or wilful act or default of such officer or

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the words States in India or Burma *vide* G B Order of 1937

† In Burma for British India read British Burma and for Post Master General read Director General *vide* G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word Governor *vide* G B Order of 1937

§ Substituted by G I Order of 1937 and G B Order of 1937

(d) any wrong payment of a money order after the expiration of one year from the date of the issue of the order, or

— — — — — payment of a money order
an officer of any post office,
Government] †

Notes — This section corresponds to s. 23 (4) of the English Post Office Act 1909 (8 Edw 7, c. 48)

CHAPTER X

PENALTIES AND PROCEDURE

Offences by Officers of the Post Office

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles

49 Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

(a) is in a state of intoxication while so employed, or

(b) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or—

(c) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid or

(d) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees

50 Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission, or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees or with both

Penalty for voluntary withdrawal from duty without permission or notice, of person employed to carry or deliver mail bags or postal articles

Notes — This clause provides a new penalty introduced with the object of preventing desertion on the part of mail runners — *Notes on Clauses*

51 Whoever being employed to carry or deliver any postal article in course of transmission by post and required while so employed to keep any register makes or causes or suffers to be made any false entry in the register with intent to induce the belief that he has visited a place or delivered a postal article which he has not visited or delivered shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees or with both.

Penalty for making false entry in register kept by person employed to carry or deliver postal articles

Notes — This clause provides a new penalty introduced with the object of preventing false entries being made in postman's register with the intention of making it appear that he has visited the villages which he has not visited — *Notes on Clauses*

and for 'Post Master General'

en substituted by G. I. C.
r, vide G. B. Order

52. Whoever, being an officer of the Post Office, commits theft

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away of postal articles in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

53. Whoever, being an officer of the Post Office, contrary to his

Penalty for opening, detaining, or delaying postal articles duty, opens or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays, or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both :

Provided that nothing in this section shall extend to the opening, detaining, or delaying of any postal article under the authority of this Act, or in obedience to the order in writing of the [Central Government]* or the direction of a competent Court.

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor," vide G. O. Order of 1937.

Penalty for fraud in connection with official marks and for receipt of excess postage.

54. Whoever, being an officer of the Post Office,—

- (a) fraudulently puts any wrong official mark on a postal article,
- or
- (b) fraudulently alters, removes, or causes to disappear any official mark which is on a postal article, or
- (c) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereon, shall be punishable with imprisonment for a term which may extend to two years, or with fine.

55. Whoever, being an officer of the Post Office entrusted with

Penalty for fraudulently preparing, altering, secreting, or destroying Post Office documents the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes, or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor," vide G. O. Order of 1937.

Prepare—The word 'prepare' includes the obtaining of signatures to a book that a postman is bound to keep in proof of his having visited the villages in his capacity as postman 1 Wier 862

56 Whoever, being an officer of the Post Office, sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud the Government of the postage on such postal article shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine

57 (1) Whoever, being an officer of the Post Office employed in any place in [India]* beyond the limits of [British India]* in which posts are established by the [Central Government or the Crown Representative],† or being appointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the [Central Government or the Crown Representative]† to take cognizance of offences committed in that place, or in any part of [British India]* by any Court of competent jurisdiction, as if the offence had been committed in that part

(2) The provisions of section 188 of the Code of Criminal Procedure, 1898, shall not apply to any offence referred to in this section

Other offences

Penalty for contravention of section 4

58 (1) Whoever—

(a) conveys otherwise than by post, a letter within the exclusive privilege conferred on the [Central Government]† by section 4, or

(b) performs any service incidental to conveying, otherwise than by post, any letter within the exclusive privilege aforesaid, or

(c) sends, or tenders or delivers in order to be sent, otherwise than by post, a letter within the exclusive privilege aforesaid, or

(d) makes a collection of letters accepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post,

shall be punishable with fine which may extend to fifty rupees for every such letter

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees

Notes—In sub section 2 of this section as well as that of section 59 the provision of the corresponding section of the Post Office Act 1866 has been altered in respect of continuing breaches of privilege of the Post Office—*Notes on Clauses*

* In Burma for India read Burma and for British India read British Burma, vide G B Order of 1937

† In British India the words within brackets have been substituted by G I 1937 In Burma for these words read 'Governor' vide G B Order of 1937

59 (1) Whoever, in contravention of the provisions of section 5 carries, receives, tenders or delivers letters or collects letters, shall be punishable with fine which may extend to fifty rupees for every such letter.

Penalty for contravention of section 5

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees

Penalty for breach of rules under section 16

60 Whoever, being appointed to sell postage stamps—

(a) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (3), clause (a), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees or with both, or

(b) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees

61 (1). Whoever, in contravention of provisions of section 19 or section 20, sends or tenders or makes over in order to be sent by post any postal article or anything, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both

Penalty for contravention of section 19 or 20

(2) The detention in the Post Office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20, shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post

Notes—A prosecution under this section is illegal unless it is started on a complaint as defined in s 4 cl (h) of Criminal Procedure Code 10 C W N 1029 This section provides a higher penalty for sending dangerous and injurious substances by post than the corresponding section in the Post Office Act 1866 The provisions of the English Law have been followed—*Notes on Clauses*

62 Whoever places in or against any letter-box provided by the Post Office for the reception of postal articles any fire, match, or light, any explosive, dangerous, filthy, noxious or deleterious substance, or any fluid, or commits a nuisance in or against any such letter-box, or does anything likely to injure any such letter-box or its appurtenances or contents shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both

Notes—This section provides a new penalty taken from the English Post Office Protection Act of 1891, for the protection of letter boxes and their contents—*Notes on Clauses*

63 Whoever, without due authority, affixes any placard advertisement, notice, list, document, board or other thing in or on, or paints tars, or in any way disfigures any post office or any letter box provided by the Post Office for

Penalty for affixing without authority thing to or painting tarring or disfiguring post office or post office letter box

the reception of postal articles, shall be punishable with fine which may extend to fifty rupees

Notes—This clause provides a new penalty taken from the English Post Office Act to prevent the disfiguring of post offices and letter boxes

64 Whoever, being required by this Act to make a declaration in respect of any postal article to be sent by post or the contents or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees

paper in an insured cover 9 Pat 126

Penalty for master of ship failing to comply with the provisions of section 40 or 41

65. Whoever, being the master of a ship,—

(a) fails to comply with the provisions of section 40, or,
(b) without reasonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag, or to comply with the directions of the officer in charge of the post office at a port of arrival as required by section 41, shall be punishable with fine which may extend to one thousand rupees

66 (1) Whoever, being either the master of a ship arriving at any port in [British India]* or any one on board, knowingly has in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the post office at the port of arrival, any postal article within the exclusive privilege conferred on the [Central Government]† by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office shall be punishable with fine which may extend to one hundred rupees for every such postal article

67 Whoever except under the authority of this Act, "or of any other Act for the time being in force"‡ or in obedience to the order in writing of the [Central Government]† or the direction of

Penalty for detaining mails or opening mail bag

* In Burma for British India read British Burma vide G B Order of 1937

† In British India the words within brackets have been substituted by G I O 1937 In Burma for these words read the word Governor vide G B Order of

‡ These words within quotations have been added by Act 15 of 1921

a competent Court, detains the mails or any postal article in course of transmission by post, or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or any other law for the time being in force

68 Whoever fraudulently retains or wilfully secretes or makes

Penalty for retaining postal articles wrongly delivered or mail bags

away with, or keeps or detains, or, when required by an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by

post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine

69 Whoever not being an officer of the Post Office, wilfully and

Penalty for unlawfully diverting letters

maliciously, with intent to injure any person, either opens, or causes to be opened any letter which ought to have

been delivered, or does any act whereby the due delivery of a letter to any person is prevented or impeded, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward

Notes—This clause extends the provision of the corresponding section in the Post Office Act 1866, so as to cover the case of attempts to commit offences—*Notes on Clauses*

General

70 Whoever abets the commission of any offence punishable

Penalty for abetting or attempting to commit offences under Act

under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence

Notes—By this section rulings laid down in 7 W. R. Cr. 51 have been made obsolete

71 In every prosecution for an offence in respect of a mail bag or

Property in cases of offences to be laid in the Post Office

of any postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail bag or postal

article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any value

72 No Court shall take cognizance of an offence punishable under

Authority for prosecutions under certain sections of Act

sections 51, 53, 58, 59, 61, unless upon

complaint made by order of, or under authority from, the Director-General [or a Post-Master-General] *

Notes—This clause introduces a new provision making the authority of the proper postal officials necessary to the institution of prosecutions for offences under the Act.—*Notes on Clauses* It is not necessary that sanction to prosecute under s 72 must precede a prosecution under s 55 of the Act and a conviction under the latter section is valid even though the sanction to prosecute was obtained only after the prosecution was launched.

CHAPTER XI

SUPPLEMENTAL

Zamindari and other district posts

73 (1) The [Central Government]† may make rules for the management of any [zamindari or other]‡ district post

(2) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to [zamindari and other]† district posts, and to the persons employed in connection therewith

74 (1) In addition to the powers, hereinbefore conferred, the [Central Government][†] may make rules to carry out any of the purposes and objects of this Act.

(2) In making any rule under this Act the [Central Government]† may direct that a breach of it shall be punishable with fine which may extend to fifty rupees

(3) All rules made by the [Central Government]† under this Act shall be published in the [official Gazette]§ and, on such publication, shall have effect as if enacted by this Act.

Not a	1	2	3	4	5	6	7	8	9	10
-------	---	---	---	---	---	---	---	---	---	----

75 The [Central Government]† may, by notification in the [official Gazette],§ authorise either absolutely or subject to conditions, the Director-General to exercise any of the powers conferred upon the [Central Government]† by this Act, other than a power to make rules

Delegation of powers other than rule making powers to Director General

76 [Repealed by Act X of 1914]

77 Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780,¹¹ or any enactment amending or extending the same.

Saving

* In Burma omit the words within brackets vide G. B. Order of 1937.

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words Governor has been substituted by G. B. Order of 1937.

† In Burma omit the words within brackets *vide* G. B. Order of 1937.

1937 In British India the words, with a bracket, have been substituted by G B Order. In Burma for these words read the word 'Gazette' vide G B Order.

21 Geo III, c 70

THE FIRST SCHEDULE *

INLAND POSTAGE RATES

(See Section 7)

LETTERS

For a weight not exceeding one tola	One anna
For every tola or fraction thereof exceeding one tola	Half an anna

POSTCARDS

Single	Nine pies
Reply	One and a half annas

BOOK PATTERN AND SAMPLE PACKETS

For the first two and a half tolas or fraction thereof	Six pies
For every additional two and a half tolas or fraction thereof in excess of two and a half tolas	Three pies

REGISTERED NEWSPAPER

For a weight not exceeding ten tolas	Quarter of an anna
For a weight exceeding ten tolas and not exceeding twenty tolas	Half an anna
For every twenty tolas or fraction thereof exceeding twenty tolas	Half an anna

PARCELS

For a weight not exceeding forty tolas	Four annas
For every forty tolas or fraction thereof exceeding forty tolas	Four annas

SECOND SCHEDULE—Repealed by Act X of 1914

THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

PART VIII

CONTENTS

SECTION	SECTION
102. Undischarged insolvent obtaining credit	104 Procedure on charge under section 103
103 Punishment of insolvents for certain offences	105 Criminal liability after discharge for composition
103A Disqualifications of insolvent	

THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909

(ACT NO III OF 1909.)

(Extract)

PART VIII

PENALTIES

102 An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both

* Inserted by Finance Act of 1938

Notes—Section 102 of the Act applies only to an undischarged insolvent adjudicated under the Act. But if a conviction under that section is unsustainable but the facts disclose an offence under section 72 (1) of the Provincial Insolvency Act the High Court may, if it thinks fit, order that the insolvent be committed to prison under the latter Act, provided that the insolvent is not a bankrupt.

Punishment of insolvent for certain offences

103 Any person adjudged insolvent who—

(a) fraudulently with the intent to conceal the state of his affairs, or to defeat the objects of this Act

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any books paper or writing relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books or

(iii) has made false entries in or withheld entries from, or wilfully altered or falsified any book paper, or writing relating to such of his affairs as are subject to investigation under this Act or

(b) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,

(i) has discharged or concealed any debt due to or from him or

(ii) has made away with charged, mortgaged, or concealed any part of his property of what kind soever,

shall, on conviction be punishable with imprisonment for a term which may extend to two years

Notes—To support a conviction under this section a charge must be made against the insolvent and the same must be proved beyond a reasonable doubt before it can be made a

nt is money belonging to him he ought not
r s 103 (b) (ii) Presidency Town Insolvency
Range 253 see also A I R 1933 Sind

Sub section (2) (b)—39 M L T 268 105 Ind Cas 459

*** 103A *** (1) Where a debtor is adjudged or re adjudged insolvent under this Act he shall subject to the provisions of this section, be disqualified from—

(a) being appointed or acting as a Magistrate

(b) being elected to any office of any local authority where the appointment to such office is by election, or holding or exercising any such office to which no salary is attached, and

* Section 103A has been added by Act VI of 1970

(c) being elected or sitting or voting as a member of any local authority

(2) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

(a) the order of adjudication is annulled under sub-section (1) of section 21, or

(b) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit.

20 English Bankruptcy Act 1863
of bankruptcy renders the bankrupt
er House of Parliament. He is also
e, for being elected to or holding
llor, or that of guardian or overseer
ghway or burial board, or select
whilst holding any of these offices

his office thereupon becomes vacant *Halsbury's Laws of England*, Vol II, p 89

Clause (b)—The granting of such certificate is discretionary with the Court
Re Burgees (1897) 4 Moor 883, *Re Lord Colin Campbell* (1888) 20 Q B D 1816,
Re Grahame (1869) 5 T L R 259

104* (1) Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to [a Presidency Magistrate or]† a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898

(2) Any complaint made by the Court under sub-section (1) may be signed by such officer of the Court as the Court may appoint in this behalf

Notes—In considering whether a complaint has not only to take into account the successful or the reverse but also must determine whole whether it is desirable in the public interest to punish an insolvent whose conduct has been so bad against him as deterrent against the same insolvents. In any case, the Judge is not without a preliminary inquiry being made, not one in which the

104 the Court

terms an insolvent show the powers which it possesses
A I R 1935 Rang 324
rved on the insolvent. To
establish a charge that books are being purposely withheld it must be shown that they
Y 418=50 Ind Cas 577 Although under
powered to make a report for the purpose
contended that the report of the Official
proceedings 14 M L T 48=25 M L J

* Substituted by Act 9 of 1926

† In Burma omit the words within brackets, vide G B Order of 1937

105 Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved

Notes—This section corresponds to section 71 of the Provincial Insolvency Act, 1920, and section 162 of Bankruptcy Act, 1914

THE INDIAN PRESS (EMERGENCY POWERS) ACT, 1931 CONTENTS

PREAMBLE

SECTION

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- 2 Definition
- Control of printing presses and newspapers*
- 3 Deposit of security by keepers of printing presses
- 4 Power to declare security or press forfeited in certain cases
- 5 Deposit of further security
- 6 Power to declare further security and publications forfeited
- 7 Deposit of security by publisher of newspaper
- 8 Power to declare security forfeited in certain cases
- 9 Deposit of further security
- 10 Power to declare further security and newspapers forfeited
- 11 Penalty for keeping press or publishing newspapers without making deposit
- 12 Consequences of failure to deposit security as required
- 13 Return of deposited security in certain cases
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- Unauthorised news sheets and newspapers*
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SECTION

- 17 Power to seize and forfeit undeclared presses producing unauthorised news sheets and newspapers
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- Special provisions relating to the seizure of certain documents*
- 19 Power to declare certain publications forfeited and to issue search warrants for same
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- 23 Application to High Court to set aside order of forfeiture
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- 25 Order of Special Bench setting aside forfeiture
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- 27 Procedure in High Court
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- 28 Service of notices
- 29 Conduct of searches
- 30 Jurisdiction barred
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THE INDIAN PRESS (EMERGENCY POWERS) ACT, 1931 (ACT NO XXIII OF 1931.)

(Received the assent of the Governor-General on the 9th October, 1931)

An Act to provide against the publication of matter inciting to or encouraging murder or violence

WHEREAS it is expedient to provide 'for better control of Press'*, It is hereby enacted as follows —

* Substituted by Act 23 of 1932

Notes—“His Excellency the Governor General published in a Gazette Extraordinary, dated the 23rd December, 1930, a statement of the reasons which moved him in exercise of the powers conferred upon him by section 72 of the Government of India Act, to make and promulgate an Ordinance (II of 1930) to provide for the better control of the Press and of unauthorised news sheets and newspapers. He stated that it was the policy of many newspapers consistently to encourage the Civil

two years
rned 55 Or L J

1447

Short title extent and duration

[1. (1) This Act may be called the Indian Press (Emergency Powers) Act, 1931

(2) It extends to the whole of British India inclusive of British Baluchistan and the Santhal Parganas *]†

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "book" includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed ;

(2) "document" includes also any painting, drawing or photograph or other visible representation,

graph or other visible representation ,
 [(3) "High Court" means the highest Civil Court of Appeal
 for any local area except in the case of the province of Coorg where
 it means the High Court of Judicature at Madras ,]†

(4) "Magistrate" means a District Magistrate [or Chief Presidency Magistrate], ‡

(5) "newspaper" means any periodical work containing public news or comments on public news,

(6) "news-sheet" means any document, other than a newspaper containing public news or comments on public news or any matter described in sub-section (1) of section 4.

(7) "press" includes a printing-press and all machines, implements and plant and parts thereof and all materials used for multiplying documents.

(8) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing,

(9) "unauthorised newspaper" means—

(a) any newspaper in respect of which there are not for the time being valid declarations under section 5 of the Press and Registration of Books Act, 1867, and

(b) any newspaper in respect of which security has been required under this Act, but has not been furnished as required:

(10) "unauthorised news-sheet" means any news-sheet other than

of 1935
order of 1937.
of 1937

a news-sheet published by a person authorised under section 15 to publish it, and

(11) "undeclared press means any press other than a press in respect of which there is for the time being a valid declaration under section 4 of the Press and Registration of Books Act, 1867

***2A** The "Provincial Government"† may, by notification in the "official Gazette" † prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification, the publication in any newspaper news sheet pamphlet, leaflet or other document of any class of information which, in the opinion of the "Provincial Government," † tends to excite sympathy with, or secure adherents to the terrorist movement

***2B** Neither the name nor the designation nor any words, signs or visible representations disclosing the identity of any witness in trial by commissioners affected under the Bengal Criminal Law Amendment Act, 1925 or in any trial by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932‡, shall, without the permission of the Commissioners, or of the Special Magistrate, as the case may be, or of the Provincial Government †, be published in any newspaper, news-sheet pamphlet, leaflet or other document]

Notes—Information conveyed by photographs regarding Chittagong Armoury raid is public news 31 C W N 990 but see A I R 1933 Mad 123 The word document in s 2 (6) bears the same meaning as in s 21 I P Code A I R 1934 All 1031 Poster or leaflet whether news sheet vide 41 C W N 121 A I P 1937 Cal 691 see also A I R 1935 Mad 835 71 M L J 357 150 Ind Cas 860 A I R 1933 Cal 222

Control of printing presses and newspapers

3 (1) Any person keeping a printing press who is required to make a declaration under section 4 of the Press and Registration of Books Act 1867§ may be required by the Magistrate before whom the declaration is made for reasons to be recorded in writing, to deposit with the Magistrate within ten days from the day on which the declaration is made security to such an amount not being more than one thousand rupees as the Magistrate may in each case think fit to require in money or the equivalent thereof in [securities of the Government of India]|| as the person making the deposit may choose

Provided that if a deposit has been required under sub-section (3) from any previous keeper of the printing-press the security which may be required under this sub-section may amount to three thousand rupees

(2) Where security required under sub-section (1) has been deposited in respect of any printing press, and for a period of three months from the date of the declaration mentioned in sub-sec

* In the Presidency of Bengal sections 2A and 1 have been inserted by Ben Act VII of 1931

† Substituted by G O Order of 1931

‡ Ben Act VII of 1932

§ Act XXX of 1867

|| In Burma for the words within brackets the words securities of the Govt of Burma or the Government of India have been substituted by G O Order of 1937

tion (1) no order is made by the [Provincial Government]* under section 4 in respect of such press, the security shall, on application by the keeper of the press, be refunded

(3) Whenever it appears to the [Provincial Government]* that any printing-press kept in any place [in the territories under its administration]† in respect of which security the provisions of this Act has not been required or having been required has been refunded under sub-section (2), is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations, of the nature described in section 4, sub-section (1) the [Provincial Government]* may, by notice in writing to the keeper of the press stating or describing such words, signs or visible representations, order the keeper to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than three thousand rupees as the [Provincial Government]* may think fit to require, in money or the equivalent thereof in [securities of the Government of India]‡ as the person making the deposit may choose

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

Notes—Sub clause (1) of section 3 provides that keepers of printing presses making a deposit of security under section 3 of the Indian Press (Emergency Powers) Act, 1931.

4. (1) Whenever it appears to the [Provincial Government]* that

any printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

(b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence,† or which tend, directly or indirectly,—

(c) to seduce any officer, soldier, sailor or airman in the military, naval or air forces of His Majesty or any police-officer from his allegiance or his duty, or

(d) to bring into hatred or contempt His Majesty or the

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for the words read the word 'Governor,' the G. I. Order of 1937.

† In Burma for the words within brackets the words 'in British Burma' have been

substituted by G. I. Order of 1937.

Government established by law in [British India]* or the administration of justice in [British India]* or any class or section of His Majesty's subjects in [British India]* or to excite disaffection towards His Majesty or the said Government, or

(e) to put any person in fear or to cause annoyance to him and thereby induce him to deliver any person any property or valuable security or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(f) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or to commit any offence, or to refuse or defer payment of any land revenue, tax, rate, cess or other due or amount payable to Government or to any local authority or any rent or agricultural land or anything recoverable as arrears of or along with such rent, or

(g) induce a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office or

(h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or

(i) to prejudice the recruiting of persons to serve in any of His Majesty's forces, or in any police-force or prejudice the training discipline or administration of any such force, or

(j) give any information in contravention of a notification published under section 2A, or

(k) disclose the identity of any witness in contravention of the provisions of section 2B]†

the [Provincial Government]* may by notice in writing to the keeper of such printing-press stating or describing the words, signs or visible representations which in its opinion are of the nature described above —

(i) where security has been deposited, declare such security, or any portion thereof, to be forfeited to His Majesty, or

(ii) where security has not been deposited, declare the press to be forfeited to His Majesty,

and may also declare all copies of such newspaper, book or other document wherever found in [British India]§ to be forfeited to His Majesty

[Provided that no such declaration shall be made in a case to which clause (j) applies unless the keeper of the printing-press has had an opportunity of showing cause why such declaration should not be made]†

|| *Explanation 1* — No expression of approval or administration made in a historical or literary work shall be deemed to be of the nature

British Burma or British India

to have been inserted by Den

† In British India the words within brackets have been substituted by G. I. Order of 1937 and in British Burma have been substituted by

I and after this explanations 2

described in this sub-section unless it has the tendency described in clause (a)

* *Explanation 2* — Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed of the nature described in clause (d) of this sub-section

* *Explanation 3* — Comments expressing disapprobation of the administration or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in clause (d) of this sub-section

* *Explanation 4* — Words pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in clause (h) or this sub-section "

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security, or any portion thereof, to be forfeited, the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867,† shall be deemed to be annulled

Notes —Sub clause (1) of clause 4 sets out in detail the objectionable matter which

defined and non variable characteristics or intention by which they may be distinguished from any other body or group 41 C W N 1217=A I R 1937 Cal 691. Under section 10 or in part if the press the declaration made under the Press becomes automatic Government established the Government of India thus to this section contains Words containing accusations containing no comments as C W N 902=A I R 58 C L J 32=A I R 1933 Cal 751 (S B) If it and not merely meaning of words used is to be considered Ibid Charge of misconduct against Government whether well founded or not comes within s 4 56 B 472=31 Bom L R 917=A I R 1932 Bom 468 (S B) Assertion in newspaper articles that Government is deliberately abusing power under Ordinances tends to cause hatred and contempt against Government and brings article

* Explanations 2, 3 and 4 have been added by Act XXIII of 1932.

† XXV of 1867

within the mischief of s 4 (1) *Ibid* Order need not stop particular clause under which alleged offence is committed 3 C W N 166=33 Cr L J 949 Where poem was held to be A I R 1933 Nag 148 one has to look to the manner in which they were addressed as a whole it may be subjects A I R 1934 Lah 219=35 Cr L J 96 Articles inciting Muslims to get rid of non Muslim Government is an offence under s 4 (1) (d) A I R 1931 Pat 320=15 P L T 286 offence 38 C W N 674 (S B)=61 poster encouraging violence A I R

Scope of Legislation — vide A I R 1935 Rang 219 (F B)=157 Ind Cas 118 A I R 1935 All 869=36 Cr L J 1019—1935 A L J 321=156 Ind Cas 908 170 Ind Cas 439 18 Lah 445=39 Cr L J 893=4 I R 1937 Lah 513 (S B)

5 (1) Where the security given in respect of any press, or any portion thereof has been declared forfeited under section 4 or section 6 every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867* shall deposit with the Magistrate before whom such declaration is made security to such an amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require in money or the equivalent thereof in [securities of the Government of India]† as the person making the deposit may choose

(2) Where a portion only of the security given in respect of such press has been declared forfeited under section 4 or section 6 any unforfeited balance still in deposit shall be taken as part of the amount of security required under sub-section (1)

Notes—By clause 5 if the keeper makes a fresh declaration, he may be required to furnish a fresh security—*Statement of Objects and Reasons*

6 (1) If after security has been deposited under section 5, the printing press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the [Provincial Government]‡ are of the nature described in section 4, sub-section (1) the [Provincial Government]‡ may, by notification in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations declare—

(a) the further security so deposited, or any portion thereof, and

(b) all copies of such newspaper book or other document wherever found in [British India]§ to be forfeited to His Majesty

(2) After the expiry of ten days from the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act 1867,* shall be deemed to be annulled

* XXX of 1867

† In Burma for the words within brackets the words Securities of the Government of Burma or the Government of India have been substituted by G. B Order of 1937

‡ In British India the words within brackets have been substituted by G. I Order of 1937 In Burma for these words read the word Governor vide G. B Order of 1937

§ In Burma for British India the words British Burma have been substituted by G. B Order of 1937

described in this sub-section unless it has the tendency described in clause (a)

* *Explanation 2* — Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed of the nature described in clause (d) of this sub-section

* *Explanation 3* — Comments expressing disapprobation of the administration or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in clause (d) of this sub-section

* *Explanation 4* — Words pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in clause (d) or this sub-section

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1) declaring a security, or any portion thereof, to be forfeited, the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867,[†] shall be deemed to be annulled

Notes — Sub clause (1) of clause 1 sets out in detail the objectionable matter which

The intention under any article given does not 16

defined and non variable characteristics or intention by which they may be distinguished from any other body or group 41 C W N 1217 = A I R 1937 Cal 691 Under section 1, in whole or in part if the press use (2) the declaration made under to the Press becomes automatic terms 'Government established ment of India ion contains a ining accusa comments as 62 = A I R ticular facts of words used †

* Explanations 2, 3 and 4 have been added by Act XVIII of 1931

† XXV of 1867

within the mischief of s 4 (1) *Ibid* Order need not stop particular clause under which alleged offence is committed 32 C W N 166 33 Cr L J 949 Where poem was held to have a tendency to incite offences of murder *vide* 29 N L R 244 A I R 1933 Nag 148 (F B) In considering whether any words come within s 4 (1) one has to look to the circumstances under which they were published and refer to whom they were addressed A I R 1932 Rang 69 (S B) Where there is an attack on police as a whole it may be said that there is an attack on a class or section of His Majesty's subjects A I R 1934 Lah 219=35 Cr L J 96 Articles inciting Muslims to get rid of non Muslim Government is an offence under s 4 (1) (d) A I R 1934 Pat 370-15 P L T 286 Disapprobation of certain Government acts is not an offence 38 C W N 674 (S B)-61 C 827 Heading Long live revolution is not a poster encouraging violence A I R 1934 Lah 264

Scope of Explanation IV—*Vide* A I R 1935 Rang 219 (F B) 157 Ind Cis 118 A I R 1935 All 369-36 Cr L J 1019 1935 A L J 321=156 Ind Cis 908 170 Ind Cas 439-18 Lah 445=33 Cr L J 893 A I R 1937 Lah 513 (S B)

5 (1) Where the security given in respect of any press, or any portion thereof has been declared forfeited under section 4 or section 6 every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867* shall deposit with the Magistrate before whom such declaration is made security to such an amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require in money or the equivalent thereof in [securities of the Government of India]† as the person making the deposit may choose

(2) Where a portion only of the security given in respect of such press has been declared forfeited under section 4 or section 6 any unforfeited balance still in deposit shall be taken as part of the amount of security required under sub section (1)

Notes—By clause 5 if the keeper makes a fresh declaration, he may be required to furnish a fresh security—*Statement of Objects and Reasons*

6 (1) If after security has been deposited under section 5, the printing press is again used for the purpose of printing or publishing any newspaper book or other document containing any words, signs or visible representations which in the opinion of the [Provincial Government]‡ are of the nature described in section 4, sub section (1) the [Provincial Government]‡ may, by notification in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations declare—

(a) the further security so deposited or any portion thereof, and

(b) every document where-
Majesty

(2) of a notice under sub section (1) the declaration made in respect of such press under section 4 of the Press and Registration of Books Act 1867,* shall be deemed to be annulled

* XXV of 1867

† In Burma

‡ In 1937

§ In G B Order of 1937

Notes—Under this section, if the printing press is again used for the printing of objectionable matter the enhanced security, the printing press and all documents containing the objectionable matter, may be, forfeited by the order of the Local Government—*Statement of Objects and Reasons.*

7. (1) Any publisher of a newspaper who is required to make a declaration made under section 5 of the Press and Registration of Books Act, 1867,* may be required by the Magistrate before whom the declaration is made, for reasons to be recorded in writing to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in [securities of the Government of India]† as the person making the deposit may choose

Provided that if a deposit has been required under sub-section (3) from any previous publisher of the newspaper, the security which may be required under this sub-section may amount to three thousand rupees

(2) Where security required under sub-section (1) has been deposited in respect of any newspaper, and for a period of three months from the date of the declaration mentioned in sub-section (1) no order is made by the [Provincial Government]‡ under section 8 in respect of such newspaper, the security shall, on application by the publisher of the newspaper, be refunded

(3) Whenever it appears to the [Provincial Government]‡ that a newspaper published [within its territories],§ in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the [Provincial Government]‡ may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than three thousand rupees, as the [Provincial Government]‡ may think fit to require, in money or the equivalent thereof in [securities of the Government of India]† as the person making the deposit may choose

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made

Notes are based
Reasons
security u
action under sub section (3) if it consider

* XXV of 1867

† The of the Government of
Order of 1937
by G I Order of
B Order of 1937
Burma have been

937 Lah 811
whole article
the require
to be at the

time of the notice issued under sub section (3) if the newspaper contained words coming within the mischief of s 4 *Ibid*

8 (1) If any newspaper in respect of which any security has been ordered to be deposited under section 7 contains any words, signs or visible representations which in the opinion of the [Provincial Government],* are of the nature described in section 4, sub-section (1) the [Provincial Government]* may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations,—

(a) where the security has been deposited, declare such security, or any portion thereof, to be forfeited to His Majesty or

(b) where the security has not been deposited annul the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act 1867†

and may also declare all copies of such newspaper, wherever found in [British India]‡ to be forfeited to His Majesty

(2) After the expiry of ten days from the date of the issue of a notice under sub section (1) declaring a security, or any portion thereof to be forfeited, the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867,† shall be deemed to be annulled

Notes — in order under this section for the deposit of security by a publisher of a newspaper is not revisable by the High Court 17 C W N 1245=22 Ind Cas 721

9 (1) Where the security given in respect of any newspaper, or any portion thereof is declared forfeited under section 8 or section 10 any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867,† as publisher of such newspaper or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such an amount not being less than one thousand or more than ten thousand rupees as the Magistrate may think fit to require, in money or the equivalent thereof in [securities of the Government of India]§ as the person making the deposit may choose

(2) Where a portion only of the security given in respect of such newspaper has been declared forfeited under section 8 or section 10, any unforfeited balance still in deposit shall be taken as part of the amount of security required under sub-section (1)

10 (1) If after security has been deposited under section 9, the newspaper again contains any words, signs or visible representations which in the opinion of the [Provincial Government]*

Power to declare further security and newspapers forfeited

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† XXV of 1867
‡ In Burma for British India the words British Burma have been substituted by G B Order of 1937

§ In Burma for the words within brackets the words securities of the Government Burma or the Government of India have been substituted by C B Order of 1937

are of the nature described in section 4, sub-section (1), the Provincial Government]* may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited, or any portion thereof, and

(b) all copies of such newspaper wherever found in [British India]† to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867, ‡ shall be deemed to be annulled and no further declaration in respect of such newspaper shall be made save with the permission of the [Provincial Government] *

Notes—When a second order of forfeiture has been passed against the publisher of a newspaper sub clause (2) of clause 10 provides that no further declaration under the Press and Registration of Books Act 1867 may be made in respect of the newspaper without the permission of the Local Government—*Statement of Objects and Reasons*

11 (1) Whoever keeps in his possession a press which is used for the printing of books or papers without making a deposit under section 3 or section 5, as required by the [Provincial Government]* or the Magistrate as the case may be, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of Books Act 1867 ‡

(2) Whoever publishes any newspaper without making a deposit under section 7 or section 9, as required by the [Provincial Government]* or the Magistrate as the case may be, or publishes such newspaper knowing that such security has not been deposited, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867 ‡

12 (1) Where a deposit is required from the keeper of a printing press under section 3, such press shall not be used for the printing or publishing of any newspaper, book or other document after the expiry of the time allowed to make the deposit until the deposit has been made, and where a deposit is required from the keeper of a printing-press under section 5, such press shall not be so used until the deposit has been made

(2) Where any printing-press is used in contravention of sub section (1), the [Provincial Government]* may by notice in writing to the keeper thereof declare the press to be forfeited to His Majesty

(3) Where a deposit is required from the publisher of a newspaper under section 7 and the deposit is not made within the time allowed the declaration made by the publisher under section 5 of the

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor vide G. B. Order of 1937.

† In Burma for British India the words British Burma have been substituted by G. B. Order of 1937.

‡ V.V. of 1867

Press and Registration of Books Act, 1867,* shall be deemed to be annulled

P L R 107 16 Loh 270=156 Ind C is 674 A joint keeper of a press on whom a

13 Where any person has deposited any security under this Act, and ceases to keep the press in respect of which such security was deposited or being a publisher makes a declaration under section 8 of the Press and Registration of Books Act, 1867,* he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security, and thereupon such security shall upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person

14 Where any printing-press is, or any copies of any newspaper, book or other documents are, declared forfeited to His Majesty under section 4, section 6, section 8, section 10 or section 12, the [Provincial Government] † may direct a Magistrate to issue a warrant empowering any police-officer, not below the rank of Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(i) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or is reasonably suspected to be so kept

Unauthorised news sheets and newspapers

15 (1) The Magistrate may, by order in writing and subject to such conditions as he may think fit to impose, authorise any person by name to publish a news sheet, or to publish news-sheets from time to time

(2) A copy of an order under sub section (1) shall be furnished to the person thereby authorised

(3) The Magistrate may at any time revoke an order made by him under sub-section (1)

16 (1) Any police-officer, or any other person empowered in this behalf by the [Provincial Government], † may seize any unauthorised news-sheet or unauthorised newspaper, wherever found

* XXX of 1867

† In British India the words within brackets have been substituted by G I Or of 1937 In Burma for these words read the word Governor, vide G B Order of

(2) Any [Presidency Magistrate],* District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any place where any stock of unauthorised news-sheets or unauthorised news papers may be or may be reasonably suspected to be, and such police-officer may seize any documents found in such place which, in his opinion, are unauthorised news-sheets or unauthorised newspapers

(3) All documents seized under sub-section (1) shall be produced as soon as may be before a [Presidency Magistrate],* District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, and all documents seized under sub-section (2) shall be produced as soon as may be before the Court of the Magistrate who issued the warrant

(4) If, in the opinion of such Magistrate or Court, any of such documents are unauthorised news-sheets or unauthorised newspapers, the Magistrate or Court may cause them to be destroyed. If, in the opinion of such Magistrate or Court, any of such documents are not unauthorised news-sheets or unauthorised newspapers, such Magistrate or Court shall dispose of them in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898†

Notes—Order of forfeiture should not be passed in the absence of person who has custody and control of press 37 C W N 821

17 (1) Where a [Presidency Magistrate]* District Magistrate or Sub-Divisional Magistrate has reason to believe that an unauthorised news-sheet or unauthorised newspaper is being produced from an undeclared press within the limits of his jurisdiction he may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any place wherein such undeclared press may be or may be reasonably suspected to be, and if, in the opinion of such police officer any press found in such place is an undeclared press and is used to produce an unauthorised news-sheet or unauthorised newspaper, he may seize such press and any documents found in the place which in his opinion are unauthorised news-sheets or unauthorised newspapers

(2) The police-officer shall make a report of the search to the Court which issued the warrant and shall produce before such Court, as soon as may be, all property seized

Provided that where any press which has been seized cannot be readily removed, the police officer may produce before the Court only such parts thereof as he may think fit

(3) If such Court, after such inquiry as it may deem requisite, is of opinion that a press seized under this section is an undeclared press which is used to produce an unauthorised news-sheet or unauthorised newspaper, it may, by order in writing declare the press to be forfeited to His Majesty. If, after such inquiry, the Court is not of

* In Burma the words 'Presidency Magistrate' have been omitted by G. B. Order of 1937

† V of 1898

such opinion it shall dispose of the press in the manner provided in sections 523 524 and 525 of the Code of Criminal Procedure 1898 *

(4) The Court shall deal with documents produced before it under this section in the manner provided in sub section (4) of section 16

18 (1) Whoever makes, sells, distributes publishes or publicly exhibits or keeps for sale distribution or publication any unauthorised news sheets or newspaper shall be punishable with imprisonment which may extend to six months or with fine or with both

Penalty for disseminating unauthorised news sheets and newspapers

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898,* any offence punishable under sub section (1), and any abetment of any such offence shall be cognizable

Notes—Sections 15

defeat various ways of are not printing presses the publication of new

Press and Registration of Books Act 1867 The procedure in these cases is more summary—*Statement of Objects and Reasons* As regards what constitutes offence vide A I R 1934 All 717 Printing Boycot British goods on road is not making news sheet 34 Cr L J 90 The word makes in this section should *prima facie* be taken to refer to the creator or author and cannot be taken to include the printer *quo printer* When an offence is committed the author (or maker) the sellers the distributors and the publishers are all equally liable under this section but not the printer who merely prints 1937 M W N 1067 In order to determine whether a speech or an article would tend to bring into hatred or contempt the Government established by law in British India or to excite disaffection so as to render the author of it liable under this section the speech or the pamphlet must be taken as a whole 1937 M W N 175 Where accused only helped in distribution he should not be punished so severely as accused who helps in preparation and printing A I R 1939 Cal 229

Special provisions relating to the seizure of certain documents

19 Where any newspaper, book or other document wherever made appears to the [Provincial Government]† to contain any words signs or visible representations of the nature described in section 4 sub section (1) the [Provincial Government]† may, by notification in the [Official Gazette],‡ stating the grounds of its opinion declare every copy of the issue of the newspaper and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found in [British India] § and any Magistrate may by warrant authorise any police officer not below the rank of Sub Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be

Notes—It is not obligatory on a Provincial Government to set out the words or passages in the book which in its opinion are of the nature described in s 4 All that this section requires the Government to do is to state the grounds of its opinion A I R 1937 Lah 513 (S B)—39 P L R 782=38 Cr L J 698 18 Lah 415—170 Ind Cas 439

* V of 1898

† In "

of 1937

‡ In

1937 I

§ In

by G. B

20 The Chief Customs-officer or other officer authorised by the [Provincial Government]* in this behalf

Power to detain packages containing certain publications when imported into British India

may detain any package brought, whether by land, sea or air, into [British India]† which he suspects to contain any news-

papers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the [Provincial Government]* may appoint in this behalf to be disposed of in such manner as the [Provincial Government]* may direct

Prohibition of transmission by post of certain documents

21 No unauthorised news-sheet or unauthorised newspaper shall be transmitted by post

22 Any officer in charge of a post office or authorised by the Post-Master-General in this behalf may

Power to detain articles being transmitted by post

detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

(a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1) or

(b) any unauthorised news-sheet or unauthorised newspaper,

and shall deliver all such articles to such officer as the [Provincial Government]* may appoint in this behalf to be disposed of in such manner as the [Provincial Government]* may direct.

Notes—Sections 19 to 22 give power to seize objectionable documents which are in circulation. Similar provisions already exist in section 99A of the Code of Criminal Procedure, 1893. In section 191A of the Sea Customs Act, 1878 and in sections 27A and 27B of the Indian Post Office Act, 1899, but these relate chiefly to seditious documents and do not affect much of the matters described in sub clause (1) of clause 4

Powers of High Court

23 (1) The keeper of a printing-press who has been ordered to

Application to High Court to set aside order of forfeiture

deposit security under sub section (3) of section 3 or the publisher of a newspaper who has been ordered to deposit security

under sub section (3) of section 7, or any person having an interest in any property in respect of which an order of forfeiture has been made under section 4 section 6, section 8, section 10, or section 19, may, within two months from the date of such order, apply to the High Court [for the local area in which such order was made],‡ to set aside such order, and the High Court shall decide if the newspaper, book or other document in respect of which the order was made did or did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1)

(2) The keeper of a printing press in respect of which an order of forfeiture has been made under sub section (2) of section 12 on the ground that it has been used in contravention of sub-section (1) of

1937† by G. I. Order of 1937
by 1 has been substituted

‡ In Burma the words within brackets have been omitted by G. B. Order of 1937

that section may apply to [such High Court]* to set aside the order on the ground that the press was not so used

Notes—*Vide* 22 Ind Cas 1006 49 Ind Cas 593 34 Cr L J 316 A I R 1933 Nag 148 60 C 408 37 C W N 166, A I R 1935 Rang 120 (S B)—36 Cr L J 871=13 Rang 98

24 Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges [or, where the High Court consists of less than three Judges, of all the Judges] †

25 If it appears to the Special Bench on an application under sub-section (1) of section 23 that the words signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order

(2) If it appears to the Special Bench on an application under sub-section (2) of section 23, that the printing-press was not used in contravention of sub-section (1) of section 12, it shall set aside the order of forfeiture.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges

(4) Where there is no such majority which concurs in setting aside the order in question, the order shall stand

Notes—*Vide* 24 Ind Cas 581

26 On the hearing of an application under sub section (1) of section 23 with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order was made

Notes—*Vide* 23 C W N 1057

27 [Every] † High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications

Notes—Sections 23 to 27 reproduce sections 17 to 21 of the Indian Press Act 1910 and provide for a reference to the High Court in case of forfeiture ordered under clauses 4 6 8 10 and 19 —*Statement of Objects and Reasons*

Supplemental

28 Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898§

Service of notices

Provided that if service in such manner cannot by the exercise of due diligence be effected, the serving officer shall, where the notice is directed to the keeper of a press affix a copy thereof to some conspicuous part of the place where the press is situate, as described in the keeper's declaration under section 4 of the Press and Registration of Books Act, 1867,* and where the notice is directed to the publisher of a newspaper, to some conspicuous part of the premises where the publication of such newspaper is conducted as given in the publisher's declaration under section 5 of the said Act, and thereupon the notice shall be deemed to have been duly served

29 Every warrant issued under this Act shall so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the Code of Criminal Procedure, 1898 †

30 Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on application under section 23 and no civil, or criminal proceeding except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act

Notes — Vide 23 C W N 1037 49 Ind Cas 557

31 Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act

[32 † All declarations required to be made under section 4 section 5 section 8 and section 8A of the Press and Registration of Books Act, 1867,* shall be made in a Presidency town before the Chief Presidency Magistrate and elsewhere before the District Magistrate ‡]

THE PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867) CONTENTS

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* XXV of 1867

† V of 1898

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§ Inurma section 3' has been omitted by G B Order of 1937

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THE PRESS AND REGISTRATION OF BOOKS ACT, 1867 *

(ACT XXV OF 1867)

(*Received the Governor General's assent on the 22nd March 1867*)

An Act for the regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books

WHEREAS it is expedient to provide for the regulation of printing-

Preamble

presses and of periodicals containing news, for the preservation of copies † of every book printed or lithographed in British India, and for the registration of such books It is hereby enacted as follows —

Translation — Copyright is not infringed by translation 14 B 586 10 B. 557.

PART I

PRELIMINARY

Interpretation clause

context —

1 In this Act, unless there shall be something repugnant in the subject or

* This title has been given by the Indian Short Title Act (XIV of 1897)

† In the preamble the word "three" which had been originally inserted before the word "copies" has been omitted having been repealed by Act X of 1890 s 1

"Book" includes every volume, part or division of a volume and pamphlet, in any language, and every sheet of music map, chart or plan separately printed or lithographed *

"Editor" means the person who controls the selection of the matter that is published in a newspaper †

Editor

"Magistrate means any person exercising the full powers of a Magistrate, [and includes a Magistrate of Police †]§

Newspaper means any printed periodical work containing public news or comments on public news †*

Newspaper

2 [Repeal of Act XI of 1835] Repealed by Act XIV of 1870

PART II

OF PRINTING PRESSES AND NEWSPAPERS

3 Every book or paper printed within [British India] † shall have printed legibly on it the name of the printer and the place of printing and (if the book or paper be published) "the name of the publisher and the place of publication

Particulars to be printed on books and papers

Object—The intention of the section is to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper 16 M 443

Printer—Includes printer of a portion 14 Bom L R 40

Publisher—Is a man who causes a book to be printed and offers it to the public for sale (A W N 1887 95) but does not include a vendor of a newspaper or books 23 C 414 see also A I R 1337 Bom 28 166 Ind Cas 263

Paper in sections 3 and 4 means paper containing news and intended for circulation A I R 1931 Pat 351 but see A I R 1937 Bom 28=38 Cr L J 145=38 Bom L R 145 166 Ind Cas 263 Prosecution has to prove that the paper is printed in British India A I R 1931 Cal 611

4 No person shall, within [British India] † keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before [the Magistrate]** within whose local jurisdiction such press may be—

I A B declare that I have a press for printing at— And this last blank shall be filled up with a true and precise description of the place where such press may be situate

Change of place—Does not require a new declaration on the part of the printer 9 P R 1869 Cr A declaration made under this section is intended by the legislature to have

by G B Order of 1937

Justice of the Peace

937 substituted

by G B Order of 1937

* The words quoted have been inserted by Act VII of 1891

** In Burma the words the Magistrate have been substituted by the word the District Magistrate by G B Order of 1937

a certain effect namely that of fasten ng responsibility for the conduct of the press on the person declaring in respect of matters where public interests are involved 12 Bom L R 635

The words 'verb keep in modifying the n' n adverbial phrase modifying the They are not an adjective phrase of the possessor of the machine No definition of the word printing is contained in the Act but using the common acceptation of the word it may be said certainly to include the multiplication of copies by pressure from an inked surface e.g. by cyclostyle machine A I R 1931 Pat 351 This Act does not provide for change of person of keeper of press No fresh declaration is necessary on resignation of manager A I R 1931 Oudh 81

Rules as to publication of printed periodicals containing public news 5 No 'newspaper * shall be published in [British India]† except in conformity with the rules hereinafter laid down

'(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper ‡

(2) The printer and the publisher of every such "newspaper * shall appear "in person or by agent authorised in this behalf in accordance with rules made under section 20, before [a District, Presidency or Sub Divisional Magistrate]§ within whose local jurisdiction, such newspaper shall be printed or published, or such printer or publisher, resides * and shall make and subscribe, in duplicate, the following declaration

'I, A B, declare that I am the printer [or publisher or printer and publisher] of the 'newspaper * entitled— and printed [or published, or printed and published, as the case may be] at— And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary

(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave [British India],† a new declaration from a printer or publisher resident within the said territories shall be necessary

'Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 or of the law to which he is subject in respect of the attainment of majority shall be permitted to make the declaration prescribed by this section nor shall any such person edit a newspaper ‡

Prima facie evidence—Such declaration is a *prima facie* evidence of publication and it throws on the accused the burden of showing that the actual publisher was not the person mentioned in the declaration 3 M 387—1 Weir 576

As regards meaning of printing and printing press, vide 32 Cr L J 681=12 Lah 483

6 Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of

Authentication of declaration

* Substituted by Act XIV of 1922
† In Burma for British India the word British Burma have been substituted by G B Order of 1937

‡ The words within quotations have been added by Act XIV of 1922
§ In Burma for the words within brackets read the District Magistrate vide G B Order of 1937

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said latter declaration attested by the seal of the Court having custody of the original, on payment of a fee of two rupees

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of latter declaration, printer or publisher of the "newspaper" therein mentioned

8A * If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before [a District, Presidency or Sub-Divisional Magistrate]† and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period

Notes—The remedy to correct a mistake as regards such declaration is prescribed by s 8A of the Act 9 Pat L T 766

PART III ‡

DELIVERY OF BOOKS

9 Printed or lithographed copies of the whole of every book which shall be printed or lithographed in [British India]§ after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto,

Copies of books printed after commencement of Act to be delivered gratis to Government

* Section 8A and the words within quotations have been added by Act XIV of 1922

† In Burma for the words within brackets the words the District Magistrate have been substituted by G B Order of 1937

‡ Part III has been substituted by Act V of 1890 s 4

§ In Burma for 'British India' the words 'British Burma' have been substituted by G B Order of 1937.

finished and coloured in the same manner as the best copies of the same shall notwithstanding any agreement, (if the book be published) between the printer and publisher thereof be delivered by the printer at such place and to such officer as the [Provincial Government]* shall by notification in the official Gazette from time to time direct, and free of expense to the Government as follows, that is to say —

(a) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and

(b) if within one calendar year from such day the [Provincial Government]* shall require the printer to deliver other such copies not exceeding two in number then within one calendar month after the day on which any such requisition shall be made by the [Provincial Government]* on the printer, another such copy, or two other such copies as the [Provincial Government]* may direct

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed

The publisher or other person employing the printer shall at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid which may be necessary to enable him to comply with the requirements aforesaid

Nothing in the former part of this section shall apply to—

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book-prints, or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act or

(ii) any newspaper * published in conformity with the rules laid down in section 5 of this Act

Notes —The expression delivered out of the press cannot be held to be equivalent to printed and that the time under s 9 (a) should be computed from when the process of making the book is completed 49 A 315=25 A L J 105=99 Ind Cas 1032-28 Cr L J 232=7 A I C R 20--A I R 1927 All 237

Receipt for copies delivered under last foregoing section

10 The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor

11 The copy delivered pursuant to clause (a) of the first paragraph of section 9 of this Act shall be disposed of as the [Provincial Government]* shall from time to time determine

Any copy or copies delivered pursuant to clause (b) of the said paragraph shall be transmitted to the British Museum or the Secretary of State [for India]† or to the British Museum and the said Secretary of State as the case may be

11A * "The printer of every newspaper in [British India]† shall deliver at such place and to such officer as the [Provincial Government]‡ may, by notification in the [official Gazette],§ direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published"

Copies of newspaper printed in British India to be delivered gratis to Government

than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand rupees" || or by simple imprisonment for a term not exceeding "six months" || or by both

PART IV

PENALTIES

12 Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand rupees" || or by simple imprisonment for a term not exceeding "six months" || or by both

Penalty for printing contrary to rule in section 3

Notes — Omission to comply with section 3 is punishable under 12 5 P R 1909 Cr An offence under this section can be committed by person carrying on business not personally but through manager 31 Cr L J 262 = A I R 1932 Rang 4

13 Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand rupees, or by simple imprisonment for a term not exceeding six months" || or by both

Penalty for keeping press without making declaration required by section 4

Notes — Press means press for printing books and papers Burden of proving that the press is workable is on the prosecution 84 C W N 143 Keeping cyclostyle machine for printing newspaper is punishable under the section A I R 191 Pat 351

14 Any person who shall in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding "two thousand rupees, and imprisonment for a term not exceeding six months" ||

Punishment for making false statement

15 Whoever shall 'edit' print or publish any "newspaper" || without conforming to the rules hereinbefore laid down, or whoever shall 'edit,' || print or publish, or shall cause to be "edited" || printed or published, any "newspaper, || knowing that the said rules have not been observed with respect to "that newspaper," || shall, on conviction before a Magistrate,

Penalty for printing or publishing periodicals without conforming to rules

* Section 11A has been added by Act XIV of 1932

† In Burma for British India the words 'British Burma' have been substituted by G B Order of 1937

‡ In British India the words within brackets have been substituted by G I, Order of 1937

§

1937

||

by Act XIV of 1922

be punished with fine not exceeding two thousand rupees, or imprisonment for a term not exceeding "six months" or both *

Notes—The Local Government is empowered to annul declarations made under this Act and any one acting against such order is punishable under this section—*Vide ss 7 and 8 of Act 7 of 1908*

16† If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall, for every such default forfeit to the Government such sum, not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered, or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered

Penalty for not delivering books or not supplying printer with maps

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and in addition to such sum such further sum as the Magistrate may determine to be the value of the maps prints or engravings which such publisher or other person ought to have supplied

16A‡ If any printer of any newspaper published in [British India]§ neglects to deliver copies of the same in compliance with section 11A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default

Penalty for failure to supply copies of newspapers *gratis* to Government

17|| Any sum forfeited to the Government under "section 16"¶ may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine **

Recovery of forfeiture and disposal thereof and of fines

* Substituted by Act XIV of 1922

† S. 16 has been substituted by Act X of 1893 s. 5

‡ Section 16A has been inserted by Act XIV of 1922

§ In Burma for British India the words 'British Burma' have been substituted by G. O. Order of 1937

|| S. 17 has been substituted by Act X of 1890 s. 5

¶ The words within quotations have been substituted by Act XI of 1903

** The words "shall when recovered be disposed of" have been omitted by G. O. Order of 1937

as follows —

shall when recovered be disposed

PART V

REGISTRATION OF BOOKS

18 There shall be kept at such office, and by such officer as [the
Registration of memoranda of books
'Provincial Government']* shall appoint
in this behalf a book to be called a cata-
logue of Books printed in [British India]†
wherein shall be registered a memorandum of every book which shall
have been delivered 'pursuant to clause (a) of the first paragraph of
section 9'‡ of this Act

Contents of memorandum

Such memorandum shall (so far as may
be practicable) contain the following parti-
culars (that is to say) —

(1) the title of the book and the contents of the title page, with a
translation into English of such title and contents, when the same
are not in the English language

(2) the language in which the book is written

(3) the name of the author, translator or editor of the book or
any part thereof

(4) the subject

(5) the place of printing and the place of publication

(6) the name or firm of the printer and the name or firm of the
publisher

(7) the date of issue from the press or of the publication

(8) the number of sheets, leaves or pages

(9) the size

(10) the first, second or other number of the edition

(11) the number of copies of which the edition consists

(12) whether the book is printed or lithographed

(13) the price at which the book is sold to the public and

(14) the name and residence of the proprietor of the copyright or
of any portion of such copyright

Such memorandum shall be made and registered in the case of
each book as soon as practicable after the
Registration of memorandum
delivery of the copy thereof pursuant to
clause (a) of the first paragraph of section 9 § ||

19 The memoranda registered during each quarter in the said
catalogue shall be published in [the official
Publication of memoranda
registered
Gazette]* as soon as may be after the end
of such quarter, and a copy of the memo-
randa so published shall be sent to the said Secretary of State [and to
the Central Government ** respectively] ††

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words 'the Governor' vide C. B. Order of 1937.

† In Burma for 'British India' the words 'British Burma' have been substituted by G. B. Order of 1937.

‡ In s. 18 the words 'letter and figure' quoted have been substituted for the words 'and figures' pursuant to section 9. — See Act XL of 1890 s. 6.

§ In s. 18 the words 'letter and figure' quoted have been substituted for the words 'copies thereof' in manner aforesaid. — See Act V of 1890 s. 6.

|| A few words repealed by the Indian Copyright Act (3 of 1914) have been omitted after this.

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words 'the Gazette' vide G. B. Order of 1937.

** Substituted by G. I. Order of 1937.

†† In Burma the words within brackets have been omitted by G. B. Order of 1937.

PART VI.

MISCELLANEOUS.

20. The [Provincial Government]* shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules

Power to make rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the [official Gazette].†

Power to exclude any class of books from operation of Act.

21. [The Provincial Government may, by notification in the official Gazette]‡ exclude any class of books "or papers"§ from the operation of the whole or any part or parts of this Act.

22. [Continuance of parts of Act.]—*Repealed by Act X of 1890, s. 7.*

23. [Commencement]—*Repealed by Act XIV of 1870.*

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1890. CONTENTS.

PREAMBLE

SECTION

SECTION.

1. Title, extent and commencement, and supersession of other enactments
2. Definitions.
3. Penalty for cruelty to animals in public places and for sale in such places of animals killed with unnecessary cruelty.
4. Penalty for practising *phula*
5. Penalty for killing animals with unnecessary cruelty anywhere
- 5A. Penalty for being in possession of the skin of a goat killed with unnecessary cruelty

- 5B Presumptions as to possession of the skin of a goat.
- 6 Penalty for employing anywhere animals unfit for labour
- 7 Penalty for permitting diseased animals to go at large or to die in public places
- 7A Special power of search and seizure in respect of certain offences.
- 8 Search warrants
- 9 Limitation for prosecutions
- 10 Destruction of suffering animals.
11. Saving with respect to religious rites and usages.
- 12 Provision supplementary to section 1, with respect to extent of Act.

THE PREVENTION OF CRUELTY TO ANIMALS ACT. (ACT NO. XI OF 1890)

(Received the Governor-General's assent on the 21st March, 1890.)

An Act for the prevention of cruelty to animals

WHEREAS it is expedient to make further provision for the prevention of cruelty to animals; It is hereby enacted as follows:—

Title, extent, and commencement, and supersession of other enactments.

1. (1) This Act may be called the Prevention of Cruelty to animals Act, 1890

* In British India the words within brackets have been substituted by G. I. Order of 1937.

† In British India the words within brackets have been substituted by G. I. Order of 1937.

‡ In Burma for these words read the words "the Governor may by notification," vide G. O. Order of 1937.

§ The words "or papers" have been inserted by Act XI of 1915

(2) This section extends to the whole of [British India]*, and the [Provincial Government]† may, by notification in the official Gazette, extend, on and from a date to be specified in the notification, the whole or any part of the rest of this Act to any such local area as it thinks fit

(3) When any part of this Act has been extended under sub-section (2) to a local area, the [Provincial Government]† may, by notification in the official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals shall, except as regards anything done, or any offence committed, or any fine or penalty incurred or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly, until the [Provincial Government],† by a like notification, otherwise directs

(4) The [Provincial Government]† may cancel or vary a notification under sub-section (2) or sub-section (3)

Application—This Act does not apply to the District of Saran in Behar and Orissa. 65 Ind Cas 439

Reasons—As regards the reasons which led to the passing of this Act, *Vide* 26 B 609

Definitions

2 In this Act, unless there is something repugnant in the subject or context,—

(1) “animal” means any domestic or captured animal and

(2) “street” includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access

Scope—This Act applies to cruelty exercised towards any animal which is either domestic or which being *feræ naturæ* has been captured and is in captivity 1 C W N 642=24 C 881

Penalty for cruelty to animals in public places and for sale in such places of animals killed with unnecessary cruelty

3 If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

(a) cruelly and unnecessarily beats, over-drives, over-loads, or otherwise ill-treats any animal or

(b) binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(c) offers, exposes, or has in his possession for sale, any live animal which is suffering pain by reason of mutilation, starvation, or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both

offence, within the meaning of offers or exposes or has in his view of the collection of the words otherwise ill treats

any animal in section 3 clause (c), include starvation of an animal 2 C L J 624

* In Burma for “British India” the words “British Burma” have been substituted by G B Order of 1937

† In British India the words within brackets have been substituted by G I C 1937 In Burma for these words read the word “Governor,” *vide* G

Clause (b)—This Act aimed at the individual who actually practises the cruelty and was not intended to make master penalty liable for the act of his servant done in the course of the servant's employment and certainly not when done contrary to the order of the master 26 B 603

Where it was found that the accused tortured the cows and where such suffering could be witnessed by persons held that he was rightly convicted 17 C W N 33¹ The intention of the legislature is not to punish any form of cruelty but to punish only such cruelty as is inflicted on an animal by causing it unnecessary pain or suffering by reason of the manner or position in which the animal is bound or carried 19 Bom L R

4 If any person performs upon any cow the operation called *phuka* he shall be punished with fine which may extend to one hundred rupees or with imprisonment which may extend to three months, or with both

5 If any person kills any animal in an unnecessarily cruel manner he shall be punished with fine which may extend to two hundred rupees or with imprisonment for a term which may extend to six months, or with both

Penalty for killing animals with unnecessary cruelty anywhere

Notes—Vide 31 P L R 1905

5A* If any person has in his possession the skin of a goat, and has reason to believe that the goat has been killed in an unnecessarily cruel manner, he shall be punished with fine which may extend to one hundred rupees or with imprisonment which may extend to three months, or with both, and the skin shall be confiscated

5B* If any person is charged with the offence of killing a goat contrary to the provisions of section 5, or with an offence punishable under section 5A, and it is proved that such person had in his possession at the time the offence was alleged to have been committed, the skin of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved that such goat was killed in an unnecessarily cruel manner, and that the person in possession of such skin had reason so to believe

6 (1) If any person employs in any work or labour any animal which by reason of any disease infirmity wound sore or other cause is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed he shall be punished with fine which may extend to one hundred rupees

(2) The [Provincial Government]† may by general or special order appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub section (1) have been committed

(3) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall

* Sections 5A and 5B have been inserted by Act 14 of 1917

† In British India the words within brackets have been substituted by G I Ord of 1937 In Burma for these words read the word Governor vide G I Order of 1937

be sent for treatment and care to an infirmary and be there detained until it is in his opinion, or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed

(4) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate [or in the case of an infirmary in a Presidency-town, the Commissioner of Police]* may from time to time prescribe

(5) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold, and that the proceeds of the sale be applied to the payment of such cost

(6) The surplus, if any, of the proceeds of the sale shall on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale

Clause —(1) The word "permit" in this clause implies knowledge of that which is permitted 20 A 186 Where a person takes all precautions to prevent the doing of an act and in spite of his precautions such act is done, it cannot be said that he permitted the
 is nothing
 The prose
 not operate
 gh Court has

power to interfere in revision with an inadequate sentence 3 Bur L J 155

7. If any person wilfully permits any animal of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner to die in any street, he shall be punished with fine which may extend to one hundred rupees

7A† If a police-officer, not below the rank of Sub-Inspector has reason to believe that an offence under section 5, in respect of a goat, is being or is about to be, or has been, committed in any place or that any person has in his possession the skin of a goat with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize any such skin and any article or thing used or intended to be used in the commission of such offence

8 (1) If a Magistrate of the first class, Sub Divisional Magistrate Search warrants Commissioner of Police or District Superintendent of Police upon information in writing, and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4 section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police officer above the rank of a constable to enter and search the place

* In Burma the words within brackets have been omitted by G B Order of 1937

† Section 7A has been inserted by t 14 of 1917.

(2) The provisions of the Code of Criminal Procedure 1882,* relating to searches under that Code shall so far as those provisions can be made applicable, apply to a search under sub section (1) "or under section 7A '†

9 A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence

Notes—This section limits the period within which prosecution may be instituted

10 When any Magistrate Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal he may direct the immediate destruction of the animal if in his opinion its sufferings are such as to render such a direction proper

11 Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect tribe or class

12 Notwithstanding anything in section 1 sections 9, 10 and 11 shall extend to every local area in which any section of this Act constituting an offence is for the time being in force

THE PREVENTION OF SEDITIOUS MEETINGS ACT CONTENTS

PREAMBLE

SECTION

- 1 Short title and extent
- 2 Power of Provincial Government to notify proclaimed areas
- 3 Definition
- 4 Notice to be given of public meetings
Power of Magistrate to cause report to be taken
Exception

SECTION

- 5 Power to prohibit public meetings
- 6 Penalties
- 7 Penalty for delivery of speeches in public places
- 8 Cognizance of offences
- 9 [Repeals]

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911

(ACT NO X OF 1911)

(Received the assent of the Governor General on the 22nd March 1911)

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity, It is hereby enacted as follows —

* See now Act V of 1882

† The words within quotations have been inserted by Act 14 of 1917

Short title and extent

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1911

[(2) It extends to the whole of British India but shall have operation only in such Provinces or parts of Provinces as the "Provincial Government"* may from time to time notify in the "official Gazette" *] †

Notes —This Act was enacted for the preservation of public peace and for the protection of the law abiding members of the community

2 [(1) The "Provincial Government"* may, by notification in the [official Gazette],* declare the whole or any part of a province, in which this Act is for the time being in operation, to be a proclaimed area] ‡

Power of Provincial Government to notify proclaimed areas

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub section shall be deemed to prevent the [Provincial Government]§ from making any further notifications in respect of the same area from time to time as it may think fit

Notes —Notifications of proclaimed areas and the making of further notifications are to be subject to the previous sanction of the Governor General —*Statement of Objects and Reasons*

3 (1) In this Act, the expression 'public meeting' means a meeting which is open to the public or any class or portion of the public

Definition

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise

Notes —A meeting held in a private premises may be a public meeting if it satisfies the condition of sub section (1)

4 (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or for the exhibition or distribution of any writing or printed matter relating to any such subject, shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously, or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be

Following sub section (2) has been substituted by

(2) It extends to the whole of British Burma but shall have operation only in such parts thereof as the Governor may notify in the Gazette

† In Burma for sub section (1) the following sub section (1) has been substituted by G. B. Order of 1937—

'(1) The Governor may by notification declare the whole or any part of British Burma in which this Act is in operation to be proclaimed area'

§ In British India the words within brackets have been substituted by G. I. Order 1937. In Burma for these words read the word 'Governor,' vide G. B. Order of

(2) The District Magistrate or any Magistrate of the first class authorised by the District Magistrate in this behalf may, by order in writing depute one or more police-officers, not being below the rank of head constable, or other persons, to attend any such meeting for the purpose of causing a report to be taken of the proceedings

Power of Magistrate to cause report to be taken

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority, [or to public meetings convened by a Sheriff]* or to any public meetings or class of public meetings exempted for that purpose by [the Provincial Government]† by general or special order

Exception

Notes — Notices of all public meetings not exempted under sub section (3) must be given to the District Magistrate or the Commissioner of Police

5 The District Magistrate or the Commissioner of Police, as the case may be, may at any time by order in writing of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity

Power to prohibit public meetings

Notes — Under this section the District Magistrate or the Commissioner of Police is empowered to prohibit public meetings

6 (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both

Penalties

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code, and of Chapter IX of the Code of Criminal Procedure, 1898

Notes — The word promotion implies some action anterior to the existence or occurrence of the thing promoted and therefore when a thing has actually taken place it cannot be said to have been promoted. There is distinction between the promotion and conduct of a public meeting 1908 Lab 342

7. Whoever in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police as the case may be, previously obtained delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant, and shall be punished with imprisonment for a term which may extend to six months or with fine or with both

Penalty for delivery of speeches in public places

* In British Burma the words within brackets have been omitted by G. I. Ord. of 1937

† Substituted by G. I. Order of 1937

- 8 No Court inferior to that of a [Presidency Magistrate or]* of
Cognizance of offences a Magistrate of the first class or Sub-
Divisional Magistrate shall try any offence
against this Act
- 9 [Repeals] (*Repealed by Act XII of 1927*)

THE PRISONERS ACT, 1900

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- 6 Power for Local Government to appoint Superintendents of Presidency prisons
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- SCHEDULE I
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- SCHEDULE III — *Repealed*

THE PRISONERS ACT, 1900

(ACT NO III OF 1900)

(Received the Governor General's assent on the 2nd February, 1900)

An Act to consolidate the law relating to prisoners confined by order of a Court

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court, It is hereby enacted as follows —

Notes—There is no law empowering a Criminal Court passing a sentence of imprisonment to direct the imprisonment in different jails. Such powers belong to the Local Government and the Inspector General of Prisons by virtue of this Act and Prison Act Rat Un Cr C S.

PART I

PRELIMINARY

Short title and extent

1. (1) This Act may be called the Prisoners Act 1900

[(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Sipri.*]†

* Sub section (2) has been omitted in Form by G. O. D. of 1937

† The word "and" after sub section (1) and the sub section (2) repealed by Act No. 1911 are omitted here

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "court" includes a Coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction, and

(b) "prison" includes any place which has been declared by the [Provincial Government],* by general or special order, to be a subsidiary jail

Notes —A lock up is not a prison 2 A 301 L B R (18th 2 1892) 596

PART II

GENERAL

3 The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise by any Court, according to the exigency of any writ, warrant or order by which such person has been committed or until such person is discharged or removed in due course of law

Notes —A Court has jurisdiction to enquire into the treatment of under trial prisoners and give directions to jail authority A I R 1931 Lah 562 see also N W P 4
under trial prisoners is prison with meaning of s 3
ordered under s 337 (3) Cr P Code to be detained
in the Prisons Act (IX of 1894) A I R 1931

4 The officer in charge of a prison shall forthwith, after the execution of every such writ, order, or warrant as aforesaid, other than a warrant of commitment for trial or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof

Officers in charge of prison to return writs etc after execution or discharge

PART III †

PRISONERS IN THE PRESIDENCY TOWNS

5 Every writ or warrant for the arrest of any person issued by the High Court in the exercise of its ordinary, extraordinary or other criminal jurisdiction shall be directed to and executed by a police officer within the local limits of such jurisdiction

Warrants etc to be directed to police officers

Notes —A person convicted under the Solicitors Act 1843 (6 & 7 Vict c 73) s 32 and 1860 (23 & 24 Vict c 127) s 26 for acting as solicitor without a licence is a prisoner Osborne v Mullman (1837) 18 Q B D 171

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor,' vide G B Order of 1937.

† In Burma Part III has been omitted by G B Order of 1937

Power for Provincial Government to appoint Superintendents of Presidency prisons

6 The [Provincial Government]* may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this Part

Explanation—Any officer so appointed, by whatever designation he may be styled is hereinafter referred to as the Superintendent

Notes—All Presidency prisons must be under the superintendence of a Superintendent of Prisons

7 Where any person is sentenced by the High Court in the

Delivery of persons sentenced to imprisonment or death by High Court

exercise of its original criminal jurisdiction to imprisonment or to death the Court shall cause him to be delivered to the Superintendent together with its warrant

and such warrant shall be executed by the Superintendent, and returned by him to the High Court when executed

Notes—All persons sentenced to imprisonment or to death by High Court must be delivered to Superintendent of Presidency Prisons

8 Where any person is sentenced by the High Court in the exer-

Delivery of persons sentenced to transportation or penal servitude by High Court

cise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent

and the transportation or penal servitude of such person shall be deemed to commence from such delivery

Notes—A High Court has power on conviction in a case submitted to it under sect 807 of Criminal Procedure Code to send the accused to a jail outside Presidency town 29 C 256=6 C W N 254 (F B)

9 Where any person is committed by the High Court, whether

Delivery of persons committed by High Court in execution of a decree or for contempt

in execution of a decree or for contempt of Court or for any other cause the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment

Notes—The

Court in execution of a decree or for contempt is A Superintendent is protected against actions in interpretation of the terms of the warrant But he

Henderson v Preston (1838) 21 Q B D 30

Greaves v Keet (1879) 4 Ex D 73 4000

He is also liable if he detains a prisoner where a

sentence is quashed on appeal *Duner v Cook* (1903), 88 L T 629

10 Where any person is sentenced by a Presidency Magistrate

Delivery of persons sentenced by Presidency Magistrates

to imprisonment or is committed to prison for failure to find security to keep the peace or to be of good behaviour, the

Magistrate shall cause him to be delivered to the Superintendent together with his warrant

Notes—A person sentenced by a Presidency Magistrate is also to be delivered to a Superintendent

11 Every person committed by a Magistrate 'or Justice of the

Delivery of persons committed for trial by High Court

Peace'† for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent

together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall as soon as practicable, cause such person to be taken before the Court at a criminal session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

Notes—After a Coroner has drawn up an inquisition and committed a person to jail refusing bail the only Court which has power to grant bail is the High Court 31 O 1=7 C W N 889

12 The High Court may, pending the hearing, under section 350 of the Code of Civil Procedure,* of any application for a declaration of insolvency, cause the judgment debtor concerned to be delivered to the Superintendent, subject to the provisions, as to

Custody pending hearing by High Court, under section 350 of the Code of Civil Procedure of application for insolvency

release on security of section 349 of the said Code,† and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law

13 (1) Every person arrested in pursuance of a writ, warrant or order of High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a Presidency town under any law or enactment for the time being in force, or in pursuance of a warrant issued under section 5, shall be brought without delay before the Court by which or by a Judge of which, the writ warrant or order was issued, awarded or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction

Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency town

(2) If the said Court or a Judge thereof is not then sitting for the exercise of original jurisdiction unless a Judge of the said Superintendent for interim the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose

Notes—This section lays down the rules as regards delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency towns

PART IV

[PRISONERS OUTSIDE THE PRESIDENCY-TOWNS:]

References in this Part to prisons etc. to be construed as referring also to Reformatory Schools

[14 In this Part all references to prisons or to imprisonment or confinement shall be construed as referring to Reformatory Schools or to prisons therein]†

* Act XIV of 1852 see now Act 5 of 1909

† This reference is to be construed as applying to the Jail Act, 1920)

! In Burma the words will have been omitted

Powers for officers in charge of prisons to give effect to sentences of certain Courts

15 (1) Officers in charge of prisons [outside the Presidency-towns]* may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(a) by any Court or tribunal acting, whether within or without [British India]†, under the general or special authority of Her Majesty or [of the Central Government, or of the Crown Representative, or of any Provincial Government, or of the Government of Burma]‡, or

“(b) by any Court or tribunal [in any Indian State]§ or State in India—

(i) If the presiding Judge or, if the Court or tribunal consists of two or more Judges, at least one of the Judges, is not an officer of the [Crown]§ authorised to sit as such Judge [by the State or the Ruler thereof]§ or by [the Central Government or the Crown Representative]§, and

(ii) if the reception, detention, or imprisonment in any province of British India, of persons sentenced by any such Court or tribunal, has been authorised by general or special order by the [Provincial Government]§, or

(c) by any other Court or tribunal, [in any Indian State]§ with the previous sanction of the [Provincial Government]§ in the case of each such sentence, order or warrant ¶

[Provided that effect shall not be given to any sentence or order or warrant for detention passed or issued by any Court or tribunal in Burma without the previous sanction of the Provincial Government concerned]**

[(2) Where a Court or tribunal of such a “Ruler” § or State has passed a sentence which cannot be executed without the concurrence of an officer of the “Crown” § and such sentence has been considered on the merits and confirmed by any such officer specially authorized in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of “the Crown” §]††

Notes.—In England prisoners may be committed either to the prison in the country in which the Committing Court has its jurisdiction or to the prison of an adjacent country
vide Halsbury's Laws, Vol. 28, p. 218

* In Burma the words within brackets have been omitted by G. B. Order of 1937

† In Burma for the words “British India” the words “British Burma” have been substituted by G. B. Order of 1937

‡ In British India the words within brackets have been substituted by G. I. Order of 1937

§ have been omitted
by G. B. Order of 1937
and substituted by G. B.

¶ Order of 1937 —

(b) by any Court or tribunal in the territories of the Chief of Karen with the previous sanction of the Governor, which may be given by general or special order

** In British India the proviso has been added by G. I. Order of 1937. This proviso has been omitted in Burma

†† In Burma subsection (2) has been omitted by G. B. Order of 1937.

16 A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him

Notes—A Prison Superintendent is liable for detaining a wrong person even when he has no means of ascertaining the identity of the person named in the warrant *Aron v Alexander* (1811) 3 Camp 35 *White v Taylor* (1801) 4 Esp 80

17 (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the [Provincial Government]* by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner, and with such restrictions or mitigations as may be specified in the warrant or order

Notes—An officer in charge of a prison is protected against actions for false imprisonment arising out of his interpretation of the term of the warrant *Henderson v Preston* (1888) 21 Q B D 362 *Mone v Rose* (1869) L R 4 B 485, *Thomas v Hudson* (1845) 14 M & W 353

18 (1) Where a British Court, exercising in or with respect to territory beyond the limits of [British India]† jurisdiction which the [Crown]* has in such territory,—

(a) has sentenced any person to death and

(b) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person, or no suitable appliances for his execution in a decent and humane manner, be executed in [British India]† has issued its warrant for the execution of such sentence to the officer in charge of a prison in [British India],†

such officer shall, on receipt of the warrant, cause the be carried out at such place as may be prescribed therein manner and subject to the same conditions in all respects were a warrant duly issued under the provisions of section Code of Criminal Procedure, 1898 †

(2) The prisons of which the officers in charge are sentences under any such warrants as aforesaid [shall] in be such as the Provincial Government]§ may, by order, direct

* In British India the words within brackets have been substituted 1937 In Burma for these words read the words 'Governor,' of 1937

† In Burma for 'British India' the words 'British Burma' G B Order of 1937

‡ Act V of 1898

§ In British India the words within brackets have been substituted 1937 In Burma for these words shall be such as behalf, vide G B Order of 1937

(3) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or if the Court consists of two or more Judges, at least one of the Judges, is an officer of the [Crown]* authorised to act as such Judge [by the Indian State or the Ruler thereof or the Central Government or the Crown Representative]†

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the British Government authorised as aforesaid

Notes —An offence committed by a Native Indian Subject of Her Majesty in any place without and beyond British India is punishable under the penal code see also 10 Ind Ca 705—12 Cr L J 193

PART V

PERSONS UNDER SENTENCE OF PENAL SERVITUDE

19 (1) Every person under sentence of penal servitude may be Person under sentence of confined in such prison within 'the pro-
penal servitude how to be dealt since ‡ as the "Provincial Government, §
with by general order, directs, and may, while
so confined be kept to hard labour and until he can conveniently be
removed to such prison, be imprisoned, with or without hard labour,
and dealt with in all other respects as persons under sentence of
rigorous imprisonment may, for the time being, by law be dealt with
(2) The time of such intermediate imprisonment, and the time of
removal from one prison to another, shall be taken and reckoned in
discharge or part discharge of the term of the sentence

Notes —Persons convicted of penal servitude must be put to hard labour until he is removed to a proper place In computing the period of his imprisonment this period is also to be counted

Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude
20 Every enactment now in force in [British India]|| with respect to persons under sentence of transportation or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act, be construed to apply to persons under sentence of penal servitude

Notes —Vide Prisons Act (X of 1894)

21 † (1) The 'Provincial Government § may grant to any per-
Power to grant licence to per son under sentence of penal servitude a
son sentenced to penal servi licence to be at large within such part of
tude [the Province]‡ and during such portion of

* Substituted by G I Order of 1937 and G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words by the Governor vide G B Order of 1937

British Burma

G I Order of 1937 substituted

his term of penal servitude as may be specified in the licence and upon such conditions as the [Provincial Government]* may by general or special order prescribe

(2) The [Provincial Government]* may revoke or, subject to such conditions, alter any licence granted under sub section (1)

Notes —Europeans and Americans cannot be sentenced with transportation. In lieu of transportation they are punished with penal servitude. Vide s. 2 of Act XXIV of 1855

22 So long as any licence granted under section 21, sub-section (1), continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the licence

23 In case of the revocation of any such licence as aforesaid, any Secretary to the [Provincial Government]* may, by order in writing, signify to any Justice of the Peace or Magistrate that the licence has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Justice or Magistrate shall issue his warrant accordingly

Notes —In the mofussil there is no Justice of the Peace

24 A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of [British India],† and shall have the same force in any place within [British India],† as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where it is executed

25 (1) When the licensee for whose arrest a warrant has been issued under section 23 is arrested thereunder, he shall be brought, as soon as conveniently may be before the Justice or Magistrate by whom the warrant was issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the licensee has been arrested

(2) Such Justice or Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the re-commitment of the licensee to the prison from which he was released under the licence

Notes —This punishment is awarded for disregard of licence

26 When a warrant has been issued under section 25, sub-section (2), the licensee shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further terms as with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked licence, is equal to the term mentioned in the original sentence

Penalty for breach of condition of the licence

27 If a licence is granted under section 21 upon any condition specified therein and the licensee—

(a) violates any condition so specified, or

(b) goes beyond the limits so specified, or

(c) knowing of the revocation of the licence, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence

PART VI

REMOVAL OF PRISONERS

References in this Part to prisons, etc. to be construed as referring also to Reformatory Schools

[28 In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein]*

29† (1) The [Provincial Government]‡ may, by general or special order, provide for the removal of any prisoner confined in a prison—

Removal of prisoners

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) In default of giving security for keeping the peace or for maintaining good behaviour,

[to any other prison in the province, or with the consent of the Provincial Government concerned, to any prison in any other Province]§

[(2) 'Subject to the orders, and under the control of the Provincial Government' || the Inspector General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the province to any other prison in the Province]¶

Notes—This section authorises the Governor General in Council to pass general or special order as to removal of prisoners from one prison to another in the same Province

30 (1) Where it appears to the [Provincial Government]‡ that Lunatic prisoners how to be dealt with any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the [Provincial Government]‡ may, by a warrant setting forth the grounds of belief that the

* In Burma section 28 has been omitted by G. B. Order of 1937

† Substituted by Act I of 1903

‡ In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the word Governor vide G. B. Order of 1937

§ In British India the words within brackets have been substituted by G. I. Order of 1937 In Burma for these words read the words to any prison in British India

|| Substituted by G. I. Order of 1937

¶ In Burma for sub section (2) read the following sub section (2) —

(2) The Governor and (subject to the orders of the Governor) the Inspector General of Prisons may by general or special order provide for the removal of any person confined as aforesaid in a prison in British Burma to any other prison in British Burma

person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within [the province]* there to be kept and treated as the [Provincial Government]† directs, during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law

(2) Where it appears to the [Provincial Government]† that the prisoner has become of sound mind the [Provincial Government]† shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged

(3) The provisions of section 9 of the Lunatic Asylums Act, 1858 ‡ shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned, and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo

"(4) In any case in which the [Provincial Government]† is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within [the province]* the [Provincial Government]† may order his removal to any such asylum or place within any [other province]* or within [any Indian State]§ by agreement with the [Provincial Government]|| of such other province or with [such state or the Ruler thereof]¶ as the case may be, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall so far as they can be made applicable apply to a prisoner removed under this sub section ***

Notes—A lunatic prisoner is to be removed to a lunatic asylum

31. [*Repealed by Act I of 1903*]

* In Burma for the words the province substitute 'British Burma and for the word

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'the territories of any Native Province or State in India'

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Government' vide G. B. Order of 1937.

§ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words 'such Native Prince or State'

¶ Substituted by Act 39 of 1920

Penalty for breach of condition of the licence

27. If a licence is granted under section 21 upon any condition specified therein, and the licensee—

- (a) violates any condition so specified ; or
- (b) goes beyond the limits so specified, or
- (c) knowing of the revocation of the licence, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest,

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

PART VI.

REMOVAL OF PRISONERS.

References in this Part to prisons, etc. to be construed as referring also to Reformatory Schools

[28 In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein]*

29† (1) The [Provincial Government]‡ may, by general or special order, provide for the removal of any prisoner confined in a prison—

- Removal of prisoners
- (a) under sentence of death, or
- (b) under, or in lieu of, a sentence of imprisonment or transportation, or
- (c) in default of payment of a fine, or
- (d) In default of giving security for keeping the peace or for maintaining good behaviour,

[to any other prison in the province, or with the consent of the Provincial Government concerned, to any prison in any other Province]§

[(2) "Subject to the orders, and under the control of the Provincial Government"|| the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the province to any other prison in the Province]†

Notes—This section authorises the Governor General in Council to pass general or special order as to removal of prisoners from one prison to another in the same Province

30 (1) Where it appears to the [Provincial Government]‡ that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the [Provincial Government]‡ may, by a warrant setting forth the grounds of belief that the

Lunatic prisoners how to be dealt with

G B Order of 1937.

Order of 137
Order of

several of
confined

PART VII

PERSONS UNDER SENTENCE OF TRANSPORTATION

32 (1) The [Provincial Government]* may appoint places within ["the province" †]‡ to which persons under sentence of transportation shall be sent and the [Provincial Government],* or some officer duly authorised in this behalf by the [Provincial Government],* shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence

Appointment of places for confinement of persons under sentence of transportation and removal thereto

"(2) In any case in which the [Provincial Government]* is competent under sub-section (1) to appoint places within [the province]† and to order the removal thereto of persons under sentences of transportation, the [Provincial Government]* may appoint such places in any [other province]† by agreement with the '[Provincial Government]* of that province']† and may by like agreement give orders or duly authorise some officer to give orders for the removal thereto of such persons ' ‡

PART VIII

DISCHARGE OF PRISONERS

33 [Any Court which is a High Court for the purposes of the Government of India Act, 1935]§ may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

Release, on recognizance, by order of High Court of prisoner recommended for pardon

Notes —Under this section a prisoner who is recommended by any court established under the Indian High Courts Act 1861, to Her Majesty, for pardon, may be released on recognizance

PART IX

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE

Attendance of Prisoners in Court

[34 In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein]||

References in this part to prisons etc., to be construed as referring also to Reformatory Schools

* In British India the words within brackets have been substituted by G I Order of 1937
other province,
that province,

G I Order of
G B Order

35 Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison [within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then]* within the local limits of the appellate jurisdiction of the High Court [to which it is subordinate],* is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison

Power of Civil Courts to require appearance of prisoner to give evidence

Notes—This section makes provision for appearance of prisoner to give evidence

District Judge in certain cases to countersign orders made under section 35

36 (1) Where an order under section 35 is made in any civil matter pending—

(a) in a Court subordinate to the District Judge, or

(b) in a Court of Small Causes [outside a Presidency town],*

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to and countersigned by,—

(i) the District Judge to whom the Court is subordinate or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate

(2) Every order submitted to the District Judge under sub section (1) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes as the case may be, of the facts which in his opinion render the order necessary, and the District Judge may, after considering such statement decline to countersign the order

37 Subject to the provisions of section 39 any Criminal Court may, if it thinks that the evidence of any person confined in any prison [within the local limits of its appellate Jurisdiction, if it is a High Court, or, if it is not a High Court, then]* within the local limits of

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge

the appellate jurisdiction of the High Court [to which it is subordinate],* is material in any matter pending before it or if a charge of an offence against such person is made or pending make an order in the form set forth in the first or second schedule, as the case may be directed to the officer in charge of the prison

Provided that if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate or within the local limits of whose jurisdiction such Criminal Court is situated

Notes—This section makes provision for attendance of prisoner to give evidence or answer charge

38 Where any person for whose attendance an order as in this Part provided is made is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned

Order to be transmitted through Magistrate of the district or sub division in which person is confined

* In Burma the words within brackets have been omitted by G. B. Order of .

to the District or Sub-Divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined

Notes—If the convict is in a jail in a district other than that in which he is required the procedure as laid down in this section should be adopted. Rat Un Cr C 66

39 (1) Where a person is confined in a prison [within a Presidency-town, or in a prison]* more than one hundred miles distant from the place where any Court† in which the Court is held, the Court

Procedure where removal is desired of person confined in Presidency town or more than one hundred miles from place where evidence is required
required, shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, and if the prison is within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the High Court, and the High Court may, if it thinks fit make an order in the form set forth in the first schedule, directed to the officer in charge of the prison

(2) The High Court making an order under sub section (1) shall send it to the District or Sub-Divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined [or in the case of a person confined in a prison within a Presidency town, to the Commissioner of Police]* and such Magistrate [or Commissioner]* shall cause it to be delivered to the officer in charge of the prison in which the person is confined

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[40. Where a person is confined in a prison beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he thinks that such person should be removed under this Part for the purpose of answering a charge of an offence or of giving evidence in any criminal matter in such Court or in any Court subordinate thereto apply in writing to the 'Provincial Government'‡ of the territories within which the prison is situate, and the 'Provincial Government'‡ may, if it thinks fit, direct that the person be so removed, subject to the court of prisoners as the "Provincial

41 Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order

* In Burma omit the words within brackets vide C B Order of 1937

† In Burma for a High Court substitute the High Court vide G B Order of 1937

‡ Substituted by G I Order of 1937

mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorises him to be taken back to the prison in which he was confined

*†42 The [Provincial Government] may by notification in[†] the [official Gazette]‡ direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined, and thereupon and so long as such notification remains in force the provisions of this part other than those contained in sections 44 to 46 shall not apply to such person or class of persons

Power to Government to exempt certain prisoners from operation of this Part

Notes—Sections 41 to 46 relate to examination of prisoners on committal

Officer in charge of prison 43 In any of the following cases, when to abstain from carrying out orders that is to say,—

(a) where the person named in any order made under section 35 section 37 or section 39 appears to be from sickness or other infirmity, unfit to be removed the officer in charge of the prison in which he is confined, shall apply to the District or Sub Divisional Magistrate within the local limits of whose jurisdiction the prison is situate and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is from sickness or other infirmity, unfit to be removed or

(b) where the person named in any such order is under committal for trial or

(c) where the person named in any such order is under a remand pending trial or pending a preliminary investigation or

(d) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined

the officer in charge of the prison shall abstain from carrying out the order and shall send to the Court from which the order has been issued a statement of the reason for so abstaining

Provided that such officer as aforesaid shall not so abstain where—

(i) the order has been made under section 37 and

(ii) the person named in the order is confined under committal for trial or under a remand pending trial or pending a preliminary investigation and does not appear to be from sickness or other infirmity unfit to be removed and

(iii) the place where the evidence of the person named in the order is required is not more than five miles distant from the prison in which he is confined

Commissions for examination of Prisoners

Comm ss on for exam n at on of Prisoners 44 In any of the following cases, that is to say,—

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†
1937

ted
by G I Order of
Ord r of 1937
by G I Order
of 1937

193 In Burma for these words read the word Gazette vide G I Order of 1937

(a) where it appears to any Civil Court that the evidence of a person confined in any prison [within the local limits of the appellate jurisdiction of such Court, if it is a High Court, or if it is not a High Court, then]* within the local limits of the appellate jurisdiction of the High Court [to which it is subordinate],* who, for any of the causes mentioned in section 42 or section 43, cannot be removed, as material in any matter pending before it, or

(b) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held is material in any such matter, or

(c) where the District Judge declines, under section 36, to countersign an order for removal,

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined

Notes—This section provides the case where commission for examination of a prisoner may be issued

[45] Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined]*

46 Every commission for the examination of a person issued under section 44 [or section 45]* shall be Commission how to be directed directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit

Service of Process on Prisoners

47 When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof

Notes—Service of a process is complete if it is exhibited to the officer in charge of the prison and a copy of the process is deposited with him

48 (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as Process served to be transmitted at prisoner's request may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process

* In Burma the words within brackets have been omitted by G. B. Order of 1937

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed, requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent

Notes.—The Court will take judicial notice of the signature of the jailer 5 B L R. O. C 51

Miscellaneous

[49 (1) For the purpose of this Part, the Courts of Small Causes established in the Presidency-towns and the Courts of Presidency Magistrates shall be deemed to be subordinate to the High Court of Judicature at Fort William, Madras or Bombay, as the case may be *]†

50 No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court

Deposit of costs
Provided that, if upon any application for such order it appears to the Court to which the application is made, that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the [Provincial Government]‡ from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure

Power to make rules under this Part 51 (1) The [Provincial Government]§ may make rules—

(a) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance

(b) for regulating the amount to be allowed for the costs and charges of such escort and

(c) for the guidance of officers in all other matters connected with the enforcement of this Part

(2) All rules made under sub section (1) shall be published in the [official Gazette]|| and shall, from the date of such publication, have the same force as if enacted by this Act

Power to declare who shall be deemed officer in charge of prison 52 The [Provincial Government]§ may declare what officer shall, for the purposes of this Part be deemed to be the officer in charge of a prison

53 (Repealed by Act X of 1914)

Order

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THE FIRST SCHEDULE.

(See sections 35 and 37)

Court of .

To the officer in charge of the (state name of prison)

You are hereby required to produce , now a prisoner in , under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day there to give evidence in a matter now pending before the said Court and after the said has been and there given his evidence before the said Court or the said Court has dispensed with his further attendance cause him to be conveyed under safe and sure conduct back to the prison

The day of

A B
(Countersigned) C D

THE SECOND SCHEDULE

(See section 37)

Court of

To the officer in charge of the (state name of prison)

You are hereby required to produce now a prisoner in under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before the said Court, and after such charge has been disposed of or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison

The day of

A B
(Countersigned) C D

THE THIRD SCHEDULE.

(Repealed by Act X of 1914)

THE PRISONS ACT, (IX OF 1894)

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ENACTMENTS REPEALED

THE PRISONS ACT, 1894

(ACT NO. IX OF 1894)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL
(Received His Excellency's Assent on the 22nd March 1894)

An Act to amend the law relating to prisons

[WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons, It is hereby enacted as follows —]*

CHAPTER I

PRELIMINARY

1 (1) This Act may be called the
Prisons Act 1894Title extent and commence-
ment

* In Burma the words within * have been omitted by G. B. C.

[(2) It extends to the whole of British India, inclusive of British Baluchistan the Santhal Parganas and the Pargana of Sipri]* and

(3) It shall come into force on the first day of July, 1894.

[(4) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive), of Bombay Act II of 1874 as amended by subsequent enactments]*

Notes.—This Act has been declared in force in the Santhal Parganas by Reg 3 of 1899 s 3 in Upper Burma (except the Shan States) by Act 18 of 1898 s 4 and in Angul district by Reg 9 of 1913 s 3

2 [Repealed by Act I of 1938]†

Definitions.

3 In this Act—

(1) 'prison' means any jail or place used permanently or temporarily under the general or special orders of [a Provincial Government]‡ for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police

(b) any place specially appointed by the "Provincial Government" § 541 of the Code of Criminal Procedure 1882, || or

(c) any place which has been declared by the [Provincial Government], § by general or special order to be a subsidiary jail

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court-martial

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure 1882 || or under the Prisoners Act, 1871 ¶

(4) 'civil prisoner' means any prisoner who is not a criminal prisoner

(5) 'remission system' means the rules for the time being in force regulating the award of marks to and the consequent shortening of sentences of prisoners in jails

(6) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder

(7) "Inspector-General" means the Inspector-General of Prisons

* In Burma the words within brackets have been omitted by G B Order of 1937

vs — enactments mentioned in

any of those enactment to have been respectively

under deemed

(3) Any enactment or order made by

as shall so far as

may

order order

of 19

of 1937

§ In British India the words within quotations have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

|| See now Act V of 1898

¶ V of 1871

(8) "Medical Subordinate means an Assistant Surgeon Apothecary or qualified Hospital Assistant and

(9) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act

Notes—A judicial lock up is a prison within the meaning of this section and a person committed to custody in pursuance of a warrant though not convicted is a criminal prisoner within the meaning of the section 4 Lah 448 2 A 301 But see L R R (1872 1892) 596 Approver ordered under s 337 (3) to be detained is prisoner within meaning of the Prison Act s 3 (2) A I R 1931 Oudh 476 Accused person is to be detained in judicial custody or in confinement in prison A I R 1931 Lah 353 Judicial lock up used for detention of under trial prisoners in prison within the meaning of s 3 A I R 1931 Lah 353

CHAPTER II

MAINTENANCE AND OFFICERS OF PRISONS

4 The [Provincial Government]* shall provide, for the prisoners in [the territories under such Government]† accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners

Notes—As regards provisions of separation of prisoners vide s 27 *infra*

5 An Inspector-General shall be appointed for [the territories subject to each "Provincial Government"*]† and shall exercise, subject to the orders of the [Provincial Government]* the general control and superintendence of all prisons situated in [the territories under such Government]†

Notes—In England all prisons are under the control of the Secretary of State for Home Department In *P v Mortimer Brown Ex parte Arisorth* (1909) 74 I P 53 it was held that the Secretary of State notwithstanding his responsibility for the administration of prisons, is not liable to summons in respect of an assault alleged to have been committed by the medical officer of a prison *Halsbury's Laws of England* Vol 23 p 231

6 For every prison there shall be a Superintendent a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer, and such other officers as the [Provincial Government]* thinks necessary [Provided that the Provincial Government of Bombay ‡ may declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent ¶]

Notes—In England a governor is protected against actions for false imprisonment

* In British India the words within brackets have been substituted by G I Order of 1937.
Burma

7 Whenever it appears to the Inspector-General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer and in such manner as the [Provincial Government]* may direct for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison

Notes.—Temporary accommodation for prisoners can be made at the instance of the Provincial Government under circumstances mentioned in the section

CHAPTER III

DUTIES OF OFFICERS

Generally

8 All officers of a prison shall obey the directions of the Superintendent all officers subordinate to the Jailor shall perform such duties as may be imposed on them by the Jailor with the sanction of the Superintendent or be prescribed by rules under section "59" †

9 No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner

10 No officer of a prison shall nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner

Notes.—Similar provisions can be found in several Municipal Acts

Superintendent

11 (1) Subject to the orders of the Inspector-General the Superintendent shall manage the prison in all matters relating to discipline, labour expenditure, punishment and control

(2) Subject to such general or special directions as may be given by the [Provincial Government,]* the Superintendent of a prison other than a central prison [or a prison situated in a presidency town] † shall obey all orders not inconsistent with this Act or any rule thereunder

which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon

Notes—In certain matters the Superintendent is subordinate to the District Magistrate

Records to be kept by Superintendent **12** The Superintendent shall keep, or cause to be kept, the following records —

- (1) a register of prisoners admitted ,
- (2) a book showing when each prisoner is to be released ,
- (3) a punishment book for the entry of the punishments inflicted on prisoners for prison-offences ,
- (4) a visitor's book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison ,
- (5) a record of the money and other articles taken from prisoners , and all such other records as may be prescribed by rules under section "59" *

Notes—All these records are to be kept by the Superintendent.

Medical Officer

13 Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Provincial Government † under section "59"‡

Notes—A medical officer should apply such treatment as may be necessary for restoring a sick prisoner to health or for maintaining them in health *Leigh v Gladstone* (1909) 26 T L R 139

14 Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector-General for information

Notes—Reports made by the Medical Officer to the Superintendent are not privileged *Leigh v Gladstone* (1909) 26 T L R 139

15 On the death of any prisoner the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely —

- (1) the day on which the deceased first complained of illness or was observed to be ill,
- (2) the labour if any, on which he was engaged on that day,
- (3) the scale of his diet on that day,
- (4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a post-mortem examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required

Jailer

16 (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere

Jailer

(2) The Jailer shall not without the Inspector-General's sanction in writing be concerned in any other employment

Jailer to give notice of death of prisoner

17 Upon the death of a prisoner the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate

18 The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners

Responsibility of Jailer

Notes—The Jailer is responsible for the safe custody of the records etc

19 The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent, but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent

Jailer to be present at night

20 Where a Deputy Jailer or Assistant Jailer is appointed to a prison he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule thereunder

Powers of Deputy and Assistant Jailers

Subordinate Officers

21 The officer acting as gate keeper, or any other officer of the prison may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and if any such article or property be found, shall give immediate notice thereof to the Jailer

Duties of gate keeper

Subordinate officers not to be absent without leave

22 Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer

- 23** Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code *
- Convict officers

CHAPTER IV

ADMISSION REMOVAL AND DISCHARGE OF PRISONERS

- 24** (1) Whenever a prisoner is admitted into prison he shall be searched, and all weapons and prohibited articles shall be taken from him
- Prisoners to be examined on admission

(2) Every criminal prisoner shall also as soon as possible after admission be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer a record of the state of the prisoner's health and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment and any observations which the Medical Officer thinks fit to add

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer

Notes—This precaution is taken so that no offence be committed by the prisoner

- 25** All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use shall be placed in the custody of the Jailer
- Effects of prisoners

- 26** (1) All prisoners, previously to being removed to any other prison shall be examined by the Medical Officer
- Removal and discharge of prisoners

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal

(3) No prisoner shall be removed from prison if labouring under any illness, until, in the opinion of the Medical Officer

Notes—The Governor is responsible for any illegal act of the warders in detaining the prisoner unlawfully after his acquittal even though he was not himself present and the illegal detention was not ordered by him *Mee v. Cruikshank* (1902) 85 L T 708

CHAPTER V

DISCIPLINE OF PRISONERS

- 27** The requisitions of this Act with respect to the separation of prisoners are as follows —
- Separation of prisoners

(1) In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts

(5) the day on which the Medical Officer was first informed of the illness

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a post-mortem examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required

Jailer

16 (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere

(2) The Jailer shall not, without the Inspector-General's sanction in writing be concerned in any other employment

Jailer to give notice of death of prisoner

17 Upon the death of a prisoner the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate

18 The Jailer shall be responsible for the safe custody of the records to be kept under section 12 for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners

Notes—The Jailer is responsible for the safe custody of the records etc

19 The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent, but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent

20 Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule thereunder

Subordinate Officers

21 The officer acting as gate keeper, or any other officer of the prison may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer

Subordinate officers not to be absent without leave

22 Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer

- 23** Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code *
 Convict officers

CHAPTER IV

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

- 24** (1) Whenever a prisoner is admitted into prison he shall be searched, and all weapons and prohibited articles shall be taken from him
 Prisoners to be examined on admission

(2) Every criminal prisoner shall also as soon as possible after admission be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailor a record of the state of the prisoner's health and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment and any observations which the Medical Officer thinks fit to add

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer

Notes—This precaution is taken so that no offence be committed by the prisoner

- 25** All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use shall be placed in the custody of the Jailor
 Effects of prisoners

26 (1) All prisoners previously to being removed to any other prison shall be examined by the Medical Officer
 Removal and discharge of prisoners

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper nor until, in the opinion of the Medical Officer such discharge is safe

Notes—The Governor is responsible for any illegal act of the warders in detaining the prisoner unlawfully after his acquittal even though he was not himself present and the illegal detention was not ordered by him *Mee v. Cruikshank* (1904) 80 L. T. 709

CHAPTER V

DISCIPLINE OF PRISONERS.

- 27** The requisitions of this Act with respect to the separation of prisoners are as follows —
 Separation of prisoners

(1) In a prison containing female as well as male prisoners the females shall be imprisoned in separate buildings or separate parts of

* Act XLV of 1960

the same buildings in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners,

(2) in a prison where male prisoners under the age of "twenty-one" * are confined, means shall be provided for separating them altogether from the other prisoners, and for separating those of them who have arrived at the age of puberty from those who have not,

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners, and

(4) civil prisoners shall be kept apart from criminal prisoners

Notes—Sub sections (1) and (2) make provisions so that sexual offences may not be committed within prison

28 Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other

Association and segregation of prisoners

29 No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate

Solitary confinement

30 (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession

Prisoners under sentence of death

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard

Notes—This precaution is taken so that he may not commit suicide

CHAPTER VI

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS

31 A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase or receive from private sources at proper hours, food clothing, bedding or other necessities but subject to examination and to such rules as may be approved by the Inspector-General

Maintenance of certain prisoners from private sources

Notes—A civil prisoner is to be maintained by the judgment creditor He may also purchase his own food etc

32 No part of any food, clothing bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner and any prisoner transgressing the provisions of

Restriction on transfer of food and clothing between certain prisoners

this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper

Notes—Restriction of food and clothing is also a part of the punishment to a prisoner convicted of an offence

33 (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary

Supply of clothing and bedding to civil and unconvicted criminal prisoners

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person such person or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner, and in default of such payment the prisoner may be released

Notes—The bedding and clothing of a civil prisoner are to be supplied by the decree-holder

CHAPTER VII

EMPLOYMENT OF PRISONERS

34 (1) Civil prisoner may, with the Superintendent's permission, work and follow any trade or profession

Employment of civil prisoners

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings, but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction to be determined by the Superintendent, for the use of implements and the cost of maintenance

Notes—A civil prisoner is only detained in prison for non payment of debt But he is not debarred from earning even in jail

35 (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine-hours in any one day

Employment of criminal prisoners

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment or any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him

Notes—This section limits the hours of work in case of a prisoner sentenced to labour

36 Provisions shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment, but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner

Notes—A person convicted under the Solicitors Act 1843 (6 & 7 Vict c 73) s 82 and s 26 1860 (23 & 24 Vict c 127) of acting as a solicitor without a licence was held to be a criminal prisoner *Osborne v Milner* (1887) 18 Q B D 471 C A

CHAPTER VIII

HEALTH OF PRISONERS

37 (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner

Notes—Proper medical help is to be given to sick prisoner without unreasonable delay

38 All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence shall be entered day by day in the prisoner's history ticket or in such other record as the [Provincial Government]* may by rule direct and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

39 In every prison an hospital or proper place for the reception of sick prisoners shall be provided

CHAPTER IX

VISITS TO PRISONERS

40 Due provision shall be made for the admission, at proper times and under proper restrictions into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate care being taken that so far as may be consistent

* Substitute 1 in British India by G. I. Order of 1937 But in Burma read for the words the word Governor title G. B. Order of 1937

with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person

Notes—Provision is made for giving instructions to legal advisers for proper conduct of a trial 'Persons mean, all persons and not certain class of persons A I, R 1932 Lah 390

41 (1) The Jailer may demand the name and address of any visitor to a prisoner, and when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched but the search shall not be made in the presence of any prisoner or of another visitor

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission, and the grounds of such proceeding, with the particulars thereof shall be entered in such record as the [Provincial Government]* may direct.

Notes—This provision is made so that the visitor may not take prohibited articles to a prisoner

CHAPTR X

OFFENCES IN RELATION TO PRISONS

42 Whoever, contrary to any rule under section '59'† introduces or removes or attempts by any means whatever to introduce or remove into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees or to both

Notes—A sentence of imprisonment under the Prisons Act must commence from the date on which it was passed 17 Cr L J 480=36 Ind Cas 160, 14 P R 1895 A person who communicates or attempts to communicate with a prisoner commits an offence 4 Lah 418 One accused communicating with another accused by means of letter also commits an offence under this section 44 M L J 585 A convict warder in a gaol is a public servant within s 21 (7) Indian Penal Code,

* In British India the words within brackets have been substituted by G I 1937 In Burma for these words read the word 'Governor' vide G B O

† Substituted by G I Order of 1937 and G B Order of 1937

43 When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him and shall, without unnecessary delay make him over to a police-officer and thereupon such police-officer shall proceed as if the offence had been committed in his presence

44 The Superintendent shall cause to be affixed, in a conspicuous place outside the prison a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission

Notes—This provision is made for giving the prisoners information as regards the acts which are considered as offences

CHAPTER XI

PRISON OFFENCES.

Prison offences

45 The following acts are declared to be prison-offences when committed by a prisoner —

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence,

(2) any assault or use of criminal force,

(3) the use of insulting or threatening language,

(4) immoral or indecent or disorderly behaviour,

(5) wilfully disabling himself from labour,

(6) contumaciously refusing to work,

(7) filing, cutting, altering, or removing handcuffs, fetters or bars without due authority,

(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment,

(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment,

(10) wilful damage to prison-property,

(11) tampering with or defacing history-tickets, records or documents,

(12) receiving, possessing or transferring any prohibited article,

(13) feigning illness,

(14) wilfully bringing a false accusation against any officer or prisoner,

(15) omitting or refusing to report as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape and any attack or preparation for attack upon any prisoner or prison official, and

(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid

Notes—Separate sentences should be passed under ss 45 and 52 at the same trial
U. B. R. (1892-1896), Vol. I, 218

46. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning

Explanation—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book, and on the prisoner's history-ticket,

(2) change of labour to some more irksome or severe form "for such period as may be prescribed by rules made by the [Provincial Government,]*†

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment,

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the [Provincial Government]*,

(5) the substitution of gunny or other coarse fabric for clothing of other material not being woollen for a period which shall not exceed three months,

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the [Provincial Government]*

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the [Provincial Government]*,

(8) separate confinement for any period not exceeding "three"† months

Explanation—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners

(9) penal diet,—that is restriction of diet in each manner and subject to such conditions regarding labour as may be prescribed by the [Provincial Government]*

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week,

(10) cellular confinement for any period not exceeding fourteen days

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement

Explanation—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners †

‡(11) penal diet as defined in clause (9) combined with "cellular"† confinement

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for the words read the word Governor vide G. B. Order of 1937

† Substituted by Act 17 of 1925

‡ Original Cl (11) was repealed and Cl (12) and (13) were renumbered as Cl (11) and (12) by Act 17 of 1925

* (12) whipping, provided that the number of stripes shall not exceed thirty.

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping

Notes—Breaches of discipline of a minor character may be punished by the Governor with any punishment not exceeding close confinement or reduced diet for three days reduction of stage for three months, forfeiture of remission for 14 days and, in the case of idleness or refusal to work deprivation of mattress for three days. For a serious or repeated offence for which the Governor's powers are insufficient a convict is reported to a director who after hearing evidence on oath, may award punishment not exceeding twenty eight days' close confinement, bread and water diet with intervals of fifteen days reduced diet for forty two days, separate confinement for not exceeding six months and forfeiture of works for stage and remissions — *Halsbury's Laws of England*, Vol 23, p 265

† [47 (1)] Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely —

(1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section.

(2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with "cellular" confinement;

"(3) cellular* confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable."

(4) whipping shall not be combined with any other form of punishment except cellular "and" ‡ separate confinement and loss of privileges admissible under the remission system

† "(5) no punishment will be combined with any other punishment in contravention of rules made by the [Provincial Government]§."

† (2) No punishment shall be awarded for any such offence so as to combine, with the punishment awarded for any other such offence, two of the punishments which may not be awarded in combination for any such offence"

48 (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever

49 Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections

* Original Cl (11) was repealed and Cl (12) and (13) were renumbered as Cl (11) and (12) by Act 17 of 1925

† Substituted by Act 17 of 1925

‡ Substituted by Act 10 of 1911

§ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor," vide G. B. Order of 1937

50 (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been

Medical Officer to certify to fitness of prisoner for punishment.

examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health

Notes—The object of this section is that a prisoner should not suffer in health for excessive punishment

51. (1) In the punishment-book prescribed in section 12, there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction

(2) In the case of every serious prison offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses the defence of the prisoner, and the finding with the reasons therefor

(3) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries

Notes—Such entries will help to prove previous convictions

52 If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award the Superintendent may forward such prisoner to the Court of the District Magistrate, or of any Magistrate of the first class ['or Presidency Magistrate,*']† having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46.

“Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class

* The words within quotations have been inserted by Act VIII of 1910

† In Burma the words within brackets have been omitted by G. B. order of 1937

[and by a Chief Presidency Magistrate to any other Presidency Magistrate]*, and†

Provided also that no person shall be punished twice for the same offence

Notes — Where a Magistrate deals with an charge and record the examination of the accused Code and proceed otherwise in a regular laid down in 32 M 303 that the Presidency under this section has been made obsolete by amendment made by Act XIII of 1910

53 (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate

Whipping

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen, it shall be inflicted, in the way of school discipline, with a lighter ratan

Notes — This provision is made so that a prisoner may not be seriously injured by whipping

54 (1) Every Jailer or officer of a prison subordinate to him who shall be guilty, of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention, for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice, shall be liable, on conviction before a court of law, to a fine of not more than two hundred rupees, or to imprisonment for a term not exceeding three months, or to both

Offences by prison subordinates

same offence

s section be punished twice for the

Notes — 7 S L R 49 U B R (1892 1896), Vol I, 299

CHAPTER XII

MISCELLANEOUS

55 A prisoner, when being taken to or from any prison in which he may be lawfully confined or otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison

Extramural custody, control and employment of prisoners

Notes — A prisoner on his way from one prison to another is still under the prison rules

56 Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the

Confinement in irons

* In Burma the words within brackets have been omitted by G B Ord of 1907
† The words within quotation marks have been inserted by Act XIII of 1910

safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector-General with the sanction of the [Provincial Government,]* so confine them

Notes—This provision is made for the safe custody of prisoners

Confinement of prisoners
under sentence of transporta-
tion in irons

57 (1) Prisoners under sentence of transportation may subject to any rules made under section [59]† be confined in fetters for the first three months after admission to prison

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly

Notes—Such a prisoner being of a more dangerous character proper precaution is taken to keep him in custody

58 No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent

Prisoners not to be ironed by
Jailer except under neces-
sity

Notes—Without necessity a prisoner need not be ironed

59 [The Provincial Government may]‡ make rules consistent with this Act—

Power to make rules

(1) defining the acts which shall constitute prison-offences,

(2) determining the classification of prison-offences into serious and minor offences

(3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof,

(4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence

(5) for the award of marks and the shortening of sentences,

(6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape,

(7) defining the circumstances and regulating the conditions, under which prisoners in danger of death may be released, §

(8) for the classification of prisons, and description and construction of wards, cells and other places of detention,

(9) for the regulation by numbers length or character of

* Substituted in British India by G I Order of 1937 In Burma read for these words the word 'Governor' vide G B Order of 1937.

† In British India the figures within brackets have been substituted by G I Order of 1937 In Burma for these figures read 60

‡ The words within brackets have been substituted in British India by G I Order of 1937 In Burma for these words read the words The Governor may vide G B Order of 1937

§ After this original paragraphs (8) and (9) have been omitted and clauses (a) of the original paragraph (7) have been renumbered as paragraphs (8) to (26) b Order of 1937 and G B, Order of 1937.

sentences or otherwise, of the prisoners to be confined in each class of prisons ;

(10) for the government of prisons and for the appointment* of all officers appointed under this Act ,

(11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost ,

(12) for the employment, instruction and control of convicts within or without prisons ,

(13) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited ,

(14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour ,

(15) for regulating the disposal of the proceeds of the employment of prisoners ,

(16) for regulating the confinement in fetters of prisoners sentenced to transportation ,

(17) for the classification and the separation of prisoners ,

(18) for regulating the confinement of convicted criminal prisoners under section 28 ,

(19) for the preparation and maintenance of history tickets ,

(20) for the selection and appointment of prisoners as officers of prisons ,

(21) for rewards for good conduct ,

(22) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire [subject, however, to the consent of the Provincial Government of any other Province to which the prisoner is to be transferred]†

(23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons ,

(24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends ,

(25) for the appointment and guidance of visitors of prisons ,

(26) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure 1882, and to the officers employed, and the prisoners confined, therein ,

[(27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners , and

(28) generally for carrying into effect the purposes of this Act]‡

61 Copies of rules, under [section 59]§ so far as they affect the government of prisons, shall be exhibited both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

Notes.—This provision is made so that prisoners may know the rules for breach of which they would be punished

62 All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as

Exercise of powers of Superintendent and Medical Officer

this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as

* Certain words after this are omitted by G. B. Order of 1937

† In British India the words within brackets have been inserted by G. I. Order of 1937. Omit these words in Burma

‡ Paragraphs 27 and 28 are inserted by G. I. Order of 1937 and G. B. Order of 1937.

§ Substituted by G. I. Order of 1937 and G. B. Order of 1937

the [Provincial Government]* may appoint in this behalf either by name or by his official designation

Notes—This provision is made so that prison discipline and prison work may not suffer in the case of temporary absence of the Medical Officer and the Superintendent

THE SCHEDULE [Repealed by Act I of 1938]
ENACTMENTS REPEALED

THE PROVINCIAL INSOLVENCY ACT, (V OF 1920)
(A few extracts)

CONTENTS.

SECTION	PART IV PENALTIES	SECTION	
69	Offences by debtors	71	Criminal liability after discharge or composition
70	Procedure on charge under s 60	72	Undischarged insolvent obtaining credit
		73	Disqualifications of insolvent

PART IV

PENALTIES

69 If a debtor, whether before or after the making of an order of adjudication,—
Offences of debtors

(a) wilfully fails to perform the duties imposed on him by section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Act and which is for the time being in his possession or under his control to the Court or to any person authorised by the Court to take possession of it or

(b) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with charged, mortgaged or concealed any part of his property of any kind whatsoever,

he shall be punishable on conviction† with imprisonment which may extend to one year

Notes—This section which deals with penalties is peculiar to India in as much as it embraces acts whether before or after making an order of adjudication 25 A L J 331=100 Ind Cas 550 The Court cannot take penal action against the insolvent under

* Substituted by G I Order of 1937 and G B Order of 1937

† Certain words after this repealed by Act XII of 1927, have been omitted

a petition for adjudication has been dismissed. An order to prosecute passed under such circumstances is entirely *ultra vires*. 58 C 331=131 Ind Cas 534=A I R 1931 Cal 508, *contra* 37 Ind Cas 638. Conviction found on report of receiver is not sustainable. Conviction for omission to mention equity of redemption of certain property mortgaged many years ago is not warranted. 170 Ind Cas 849-39 P L R 218=A I R 1937 Lah 432. To fulfil the requirements of the word wilfully in clause (a) it will have to be proved that the account books required to be produced were in the possession or power of the debtor. 61 C 537=38 C W N 612-A I R 1934 Cal 409.

Concealment—Concealment of property may be made by conduct. 43 A 406-64 Ind Cas 37. An insolvent cannot be convicted for concealment, when facts do not disclose criminal intention beyond per adventure. A I R 1937 Cal 231=38 Cr L J 710. As regards Judge's discretion *vide* A I R 1935 Pat 126=16 Pat L T 140=159 Ind Cas 171.

Clause (c)—Clause (c)(1) refers to debts incurred before order of adjudication and not to debts incurred after that order. 134 Ind Cas 861=27 N L R 304. The word made away with' in clause (c) (ii) are sufficient to cover cases of gift of immoveable property. 8 O W N 1318.

Appeal—No appeal from

to convict a debtor for an offence. Cas 907 see also 39 A 171=37 Ind 740. 55 Ind Cas 717, 38 M L J 101. A I R 1937 Lah 432, but see A I R

1937 Oudh 217-1937 O W N 236-166 Ind Cas 838.

***70** Where the Court is satisfied, after such preliminary inquiry, if any, as it thinks necessary, that there is ground for inquiring into any offence referred to in section 69 and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.

Procedure on charge under section 69

Notes—If a debtor

on the Insolvency Judge to give notice *ma facie* grounds for enquiry into an offence. P L R 1160=A I R 1936 Lah 571. The insolvent. 24 C W N 418. The sessions Judge is not disqualified to hear an appeal simply because he directed prosecution as an Insolvency Judge. A I R 1923 All 103. As to jurisdiction of Court where fraudulent mortgage was executed at Bombay and assets were held and creditors were prejudiced at Kolkata. A I R 1933 Nag 33=344 Cr L J 1038=145 Ind Cas 550=1933 Cr C 75. Court is given discretion to hold enquiry. A I R 1923 Cal 211=47 C L J 250.

71 Where an insolvent has been guilty of any of the offences specified in section 69, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Notes—This section provides for the criminal liability of insolvent after his discharge but only for the offences specified under s 69 and not for that specified under s 72(1).

On the other hand the Court has no jurisdiction to make an order under s 72 after the insolvent's discharge 61 C 605 151 Ind Cas 1026-59 C L J 399-A I R 1934 Lah 764 see also 72 N L R 304

72 (1) An undischarged insolvent obtaining credit to the extent

of fifty rupees or upwards from any person
Undischarged insolvent obtains credit to the extent of such person that he is

convicted by a Magistrate, he

which may extend to six months or with fine or with both

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1) the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class and may send the accused in custody or take sufficient security for his appearance before such Magistrate, and may bind over any person to appear and to give evidence on such trial

Notes. m. 3 who had committed an offence under s 72 can only be granted an order of discharge. The Court has no jurisdiction after the insolvent had been discharged 61 C 605 151 Ind Cas 1026-59 C L J 399-A I R 1934 Cal 764

Sub section (1) defines the offence and sub section (2) prescribes the only mode by which the offender can be brought to trial. The word 'may' in sub section (2) only shows that the Insolvency Court has a discretion in referring the case to Magistrate and that no conviction can be sustained at the instance of a private complaint 44 C L J 350 53 C 929

73 (1) Where a debtor is adjudged or re-adjudged insolvent under

this Act he shall, subject to the provisions of this section be disqualified from—

(a) being appointed or acting as a Magistrate

(b) being elected to any office of any local authority where the appointment to such office is by election or holding or exercising any such office to which no salary is attached and

(c) being elected or sitting or voting as member of any local authority

(2) The disqualifications which an insolvent is subject to under this section shall be removed and shall cease if—

(a) the order of adjudication is annulled under section 35 or

(b) he obtains from the Court an order of discharge whether absolute or conditional with a certificate that his insolvency was caused by misfortune without any misconduct on his part

(3) The Court may grant or refuse such certificate as it thinks fit but any order of refusal shall be subject to appeal

THE PUBLIC ACCOUNTANTS' DEFAULTS ACT, (XII OF 1850)

CONTENTS

PREAMBLE

SECTION

- 1 Public Accountants to give security
- 2 Amount and kind of security and with what sureties
- 3 Public Accountant defined

SECTION

- 4 Prosecution of accountants and sureties
- 5 Enactments applied to by and against

THE PUBLIC ACCOUNTANTS' DEFAULTS ACT, 1850

(ACT NO XII OF 1850.)

(Passed on the 22nd March, 1850)

For avoiding loss by the default of Public Accountants

Preamble

For better avoidance of loss through the default of public accountants, It is enacted as follows —

1 Every public accountant shall give security for the due discharge of the trusts of his office and for the due account of all moneys which shall come into his possession or control by reason of his office

2 In default of any Act having special reference to the office of any public accountant, the security given shall be of such amount and kind real or personal or both, and with such sureties (regard being had to the nature of the office), as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office *

[3 For the purposes of sections 1 and 2 of this Act, the expression 'public accountant' means any person who as Official Assignee or Trustee, or as Sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, and for the purposes of sections 4 and 5 of this Act the expression shall also include any person who, by reason of any office held by him in the service of the 'Crown in India',† is entrusted with the receipt, custody or control of any moneys or securities for money, or management of any lands belonging to the Crown]‡

4 The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land revenue due to Government

Revision —The High Court has no jurisdiction under s 115 of the Civil Procedure Code of 1908 to interfere with an order passed by a District Judge under s 4 of the Public Accountants' Default Act 19 Bom L R 926=49 Ind Cas 465

5 All regulations and Acts now or hereafter to be in force for the recovery of arrears of land revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public-accountant

6 [Validation of former Rules Rep by Act 14 of 1870]

G I Order of 1937 and G B Order of 1937
ions read the words Government of Burma

G B Order of 1937

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850.

CONTENTS.

PREAMBLE.

SECTION

- 1 [Repealed]
- 2 Articles of charge to be drawn out for public inquiry into conduct of certain public servant
- 3 Authorities to whom inquiry may be committed
Notice to accused
- 4 Conduct of Government prosecution
- 5 Charge by accuser to be written and verified
Penalty for false accusation
Institution of inquiry by Government,
- 6 Security from accuser left by Government to prosecute
- 7 Power of Government to abandon prosecution and to allow accuser to continue it
- 8 Powers of commissioners
Their protection
Service of their process
Powers of Court, etc., acting under commission
- 9 Penalty for disobedience to process
- 10 Copy of charge and list to be furnished to accused
- 11 Procedure at beginning of inquiry
Non appearance of accused and admission of charge
- 12 Prosecutor's right of address
- 13 Evidence of prosecution and examination of witnesses
Re examination by prosecutor

SECTION

- 14 Power to admit or call for new evidence for prosecution
Accused's right to adjournment
- 15 Defence of accused
To be recorded only when written
- 16 Evidence for defence and examination of witnesses
- 17 [Repealed]
- 18 Notes of oral evidence
- 19 Inquiry when closed with defence
Prosecutor when entitled to reply and give evidence
Accused not entitled to adjournment
- 20 Power to require amendment of charge and to adjourn
Reasons for refusing adjournment to be recorded
- 21 Report of commissioners proceedings
- 22 Power to call for further evidence or explanation
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Reference of report of special commissioners
- 23 Final orders
- 24 Definition of Government
Saving of enactments as to dismissal of certain officers
Commission under Act for their trial
- 25 Saving of power of removal without inquiry under Act

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850.

(ACT NO. XXXVII OF 1850.)

(Received the assent of the Governor General on the 1st November, 1850)

For regulating inquiries into the behaviour of Public Servants

[WHEREAS it is expedient to amend the

Preamble into the removable

without the sanction of Government throughout the territories under the Government of "India",* It is enacted as follows —]†

1 [Repeal of Acts — Repealed by Act XIV of 1870]

2 Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of [the Government not

Articles of charge to be drawn out for public inquiry into conduct of certain public servants

* Substituted by Act I of 1897

† In Burma the preamble has been omitted by G. B. Order of 1937

removable from his appointment without the sanction of the Government] it 'may'† cause the substance of the imputations to be drawn into distinct articles of charge, and "may"† order a formal and public inquiry to be made into the truth thereof

3 The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry

Authorities to whom inquiry may be committed

4 When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf

5 When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid

6 Where the imputation shall have been made by an accuser and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury, or subordination of perjury, as the case may be

7. At any subsequent stage of the proceedings, the Government may if it think fit, abandon the prosecution, and in such case may, if it think fit on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing on his furnishing such security as is hereinbefore mentioned

8 The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and

Power of commissioners

* In British India the words "Civil and Criminal Courts" were substituted by Act I of 1897 removal from his appointment of 1937
 on substituted by G. I. Order of

Criminal Courts by "the Code of Criminal Procedure, 1898,"* and shall have the same powers for the summons of witnesses and for compelling the production of documents and for the discharge of their duty under the

commission, and shall be entitled to the same protection as the Zila and City Judges except that all process to cause the attendance of

witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, [and if he resides within Calcutta, Madras or Bombay, then

through the Supreme Court of Judicature there]† When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission

9 All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed

10 A copy of the articles of charge and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused at least three days before the beginning of the inquiry exclusive of the day of delivery and the first day of the inquiry

11 At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners which shall be openly read, and the person accused shall thereupon be required to plead 'guilty' or 'not guilty' to each of them, which pleas shall be forthwith recorded with the articles of charge If the person accused refuses or without reasonable cause neglects to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge

12 The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge and of the evidence by which they are to be proved his address shall not be recorded

13 The oral and documentary evidence for the prosecution shall then be exhibited the witnesses shall be examined by or on behalf of the prosecutor and may be cross examined by or on behalf of the person accused The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined

* Substituted by Act V of 1914

† In Burma these words have been omitted by G. B. Order of 1937

but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit

14 If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned

15 When the case for prosecution is closed, the person accused shall be required to make his defence orally or in writing, as he shall prefer. If made orally, it shall not be recorded, if made in writing it shall be recorded after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

16 The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution

17 *[Examination of witnesses and evidence by prosecutor—Repealed by Repealing Act (XII of 1876)]*

18 The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings

19 If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence, if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him

20 When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time

The commissioners may also, if they think fit adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused the commissioners shall record the application, and their reasons for refusing to comply with it.

21 After the close of the inquiry, the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

22 The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case, and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

***[23†** In this Act, 'the Government means the Central Government in the case of persons employed under that Government and the Provincial Government in the case of persons employed under that Government]

***[24 ‡** Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act in any case in which the Government shall think it expedient]

25 Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act

* In Burma sections 23 and 24 have been omitted by G. B. Order of 1937

† Section 23 has been substituted by G. I. Order of 1937

‡ Repealed as to the Lower Provinces and N. W. P. of Bengal by Act XVI

THE INDIAN RAILWAYS ACT (IX OF 1890)

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THE INDIAN RAILWAYS ACT, 1890*

(ACT IX OF 1890)

(Received the Governor General's assent on the 21st March, 1890)

An Act to consolidate, amend and add to the law relating to Railways in India

[WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India, It is hereby enacted as follows—]

CHAPTER I

PRELIMINARY

[1 (1) This Act may be called the Indian Railways Act, 1890

Title extent and commencement

* In Burma the title and preamble have been omitted by G. O. Order of 1937

(2) It extends to the whole of British India, inclusive* in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act 1887 of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all native subjects of Her Majesty, without and beyond British India and those dominions and

(3) It shall come into force on the first day of May, 1890]†

Notes —A resolution which appeared in the *Ga zette of India* is not a rule 9 Ind Cas 1011—36 P R 1911 A railway company can prevent persons from entering in railway premises Vide *Ibid*

[2 Repealed —*Repealed by Act I of 1938*]‡

Definitions

3 In this Act, unless there is something repugnant in the subject or context,—

(1) 'tramway' means a tramway constructed under the Indian Tramways Act 1886, or any special Act relating to tramways

(2) ferry includes a bridge of boats pontoons or rafts, a swing bridge a flying bridge and a temporary bridge and the approaches to, and landing places of, a ferry

(3) inland water means any canal, river lake or navigable water [in British India] §

(4) 'railway' means a railway or any portion of a railway for the public carriage of passengers animals or goods and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway

(b) all lines of rails sidings or branches worked over for the purposes of, or in connection with a railway

(c) all stations offices, warehouses, wharves workshops manufacturing fixed plant and machinery and other works constructed for the purposes of, or in connection with a railway and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway

(5) railway company includes any persons whether incorporated or not who are owners or lessees of a railway or parties to an agreement for working a railway ||

* ~
† ,

Maje

Majesty & hereover they may be

‡ In Burma section 2 given below is in force

2 (1) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof

(2) But all rules declarations and appointments made sanctions and directions given forms approved powers conferred and notifications published under any of those enactments or under any enactment repealed by any of them shall so far as they are

enact
or to

* (6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State, means the Manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway.

(8) "Inspector" means an Inspector of Railways appointed under this Act

(9) "goods" includes inanimate things of every kind

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds

(11) "traffic" includes rolling-stock of every description, as well as passengers, animals and goods

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations

(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf and authorising the person to whom it is given to travel as a passenger on a railway gratuitously.

(16) "ticket" includes a single ticket, a return ticket and a season ticket

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy and

(18) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act

[(19) "federal railway," "Indian State railway" and "minor railway" have the meanings respectively assigned to them in the Government of India Act, 1935, except that they do not in any provision of this Act include any tramway, unless that provision has been extended under section 146 of this Act to that tramway

(20) "Government" when the context so requires means the Federal Railway Authority

(21) 'the safety controlling authority' means the Federal Railway Authority, or, in relation to functions which the Central Government determines under section 181 (3) of the Government of India Act, 1935, shall be performed by persons independent of that Authority and of any railway administration, the Central Government.

(22) "the general controlling authority" means in relation to a

federal railway, the Federal Railway Authority, in relation to a minor railway the Provincial Government, and, in relation to an Indian State railway, the Governor-General acting in his discretion]*†

Notes—Although s 3 cl (4) of the Railway Act is wide staff quarters are not part of the Railway 32 Ind Cas 177 As regards the meaning of railway, vide 9 Ind Cas 1011=36 P R 1911 Staff quarters are not part of Railway 23 Ind Cas 177

EMPLOYEE—3 Bur L J 147

CHAPTER II

INSPECTION OF RAILWAYS

4 (1) The [safety controlling authority]‡ may appoint persons by name or by virtue of their office, to be
Appointment and duties of Inspectors Inspectors of Railways

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the [safety controlling authority]‡ as required by this Act

(b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the [safety controlling authority]‡ may direct,

(c) to make inquiry under this Act into the cause of any accident on a railway

(d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways

Notes—In England for the purpose of carrying out its duties the Board of Trade has power to appoint inspectors to inspect railways and to make authorised inquiries with respect to any railway or into the cause of any railway accident—*Halsbury's Laws of England* Vol 23 p 738

5 An Inspector shall for the purpose of any of the duties which he

Powers of Inspectors is required or authorised to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the [safety controlling authority]‡ shall for that purpose have the following powers, namely—

(a) to enter upon and inspect any railway or any rolling stock used thereon

(b) by an order in writing under his hand addressed to the railway administration to require the attendance before him of any railway servant, and to require answers or returns to such inquiries

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma omit clauses 19 to 22

† In Burma after section 3 the following new section 2A has been inserted by G B Order of 1937—

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Board' vide G B Order of 1937

3 *Special provisions as to safety*—In relation to any function which the Governor determines under sub section (3) of section 69 of the Government of Burma Act, 1935 shall be performed by persons independent of the Board, references in this Act to the Board have effect as if they were references to the Governor

(6) "railway administration" or "administration" in the case of a railway administered by the Government or a Native State the Manager of the railway and includes the Government or Native State, and, in the case of a railway administered by a company, means the railway company.

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway.

(8) "Inspector" means an Inspector of Railways appointed under this Act.

(9) "goods" includes inanimate things of every kind.

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks and trollies of all kinds.

(11) "traffic" includes rolling-stock of every description as well as passengers, animals and goods.

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations.

(13) "rate" includes any fare, charge or other payment for the carriage of any passenger, animal or goods.

(14) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any services rendered thereat.

(15) "pass" means an authority given by a railway administration or by an officer appointed by a railway administration in this behalf and authorising the person to whom it is given to travel as a passenger on a railway gratuitously.

(16) "ticket" includes a single ticket, a return ticket and a season ticket.

(17) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy.

(18) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

[(19) "federal railway," "Indian State railway" and "minor railway" have the meanings respectively assigned to them in the Government of India Act, 1935 except that they do not in any provision of this Act include any tramway, unless that provision has been extended under section 146 of this Act to that tramway.]

(20) "Government" when the context so requires means the Federal Railway Authority.

(21) "the safety controlling authority" means the Federal Railway Authority, or, in relation to functions which the Central Government determines under section 181 (3) of the Government of India Act 1935, shall be performed by persons independent of that Authority and of any railway administration the Central Government.

(22) "the general controlling authority" means in relation to a

federal railway, the Federal Railway Authority, in relation to a minor railway, the Provincial Government, and, in relation to an Indian State railway, the Governor-General acting in his discretion]*†

Notes = Although s 3 cl (4) of the Railway Act is wide staff quarters are not part of the Railway s2 Ind Cas 177 As regards the meaning of railway vide 9 Ind Cas 1011—36 P R 1911 Staff quarters are not part of Railway 23 Ind Cas 177

EMPLOYEE—3 Bur L J 147

CHAPTER II

INSPECTION OF RAILWAYS

4 (1) The [safety controlling authority]‡ may appoint persons by name or by virtue of their office, to be
Appointment and duties of Inspectors Inspectors of Railways

(2) The duties of an Inspector of Railways shall be—

(a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the [safety controlling authority]‡ as required by this Act,

(b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the [safety controlling authority]‡ may direct,

(c) to make inquiry under this Act into the cause of any accident on a railway,

(d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways

Notes—In England for the purpose of carrying out its duties the Board of Trade has power to appoint inspectors to inspect railways and to make authorised inquiries with respect to any railway or into the cause of any railway accident—*Halsbury's Laws of England* Vol 23, p 738

5 An Inspector shall for the purpose of any of the duties which he is required or authorised to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the [safety controlling authority]‡ shall for that purpose have the following powers, namely—

(a) to enter upon and inspect any railway or any rolling stock used thereon,

(b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma omit clauses 19 to 22

† In Burma after section 3 the following new section 3A has been inserted by G B Order of 1937—

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Board' vide G B Order of 1937.

3 Special provisions as to safety—In relation to any function which the determines under sub section (3) of section 69 of the Government of Burma shall be performed by persons independent of the Board, references in this Board have effect as if they were references to the Governor

as he thinks fit to make from such railway servant or from the railway administration,

(c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect

Notes — 'Every such Inspector has power, for the purposes of his duties to enter and inspect any railway and all stations works, buildings, offices, stock, plant and machinery belonging thereto. Any person engaged in the management of a railway or in the employment of a company may be summoned to attend an Inspector and is bound to supply answers and returns to such inquiries as the Inspector makes. An Inspector may also require and enforce the production of all books, papers and documents of a company which he considers necessary. — *Halsbury's Laws of England*, Vol 23, p 789

6 A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act

Facilities to be afforded to Inspectors

CHAPTER III

CONSTRUCTION AND MAINTENANCE OF WORKS

7. (1) Subject to the provisions of this Act and, in the case of immovable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of railway company, to the provisions of any contract between the company and the [Government],* a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

(a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, "lines of railway,"† ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper,

(b) alter the course of any rivers, brooks, streams, or water-courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper;

(c) make drains or conduits into, through or under any lands

* In Burma after the word "Government" insert the words "or the Board," vide G B Order of 1937

† Added by act IX of 1896, s 1.

adjoining the railway for the purpose of conveying water from or to the railway,

(d) erect and construct such houses warehouses, offices and other buildings, and such yards, stations wharves engines machinery, apparatus and other works and conveniences as the railway administration thinks proper,

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead and

(f) do all other acts necessary for making, maintaining altering or repairing and using the railway

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the [general controlling authority]*

Clause (1)—Clause (1) enables the railway company to do all acts necessary for making, maintaining altering or repairing and using the railway, notwithstanding anything in any other enactment for the time being in force 11 Bom L R 1181=31 B 252

A person who alleges in his plaint that a railway company in the execution of the works authorised by this section have interfered with his right to the flow of water to his land but does not suggest in his plaint that the company acted beyond the powers conferred upon them by this section is not entitled to a decree directing the company to construct a new channel for the purposes of irrigating his land, though if he has sustained any damage as the result of the exercise of their powers under the Act by the company he can recover compensation if he adopts the special procedure prescribed by s. 10 of the Act 25 M 632 Where the Legislature authorises a railway company to do certain act it is not liable to pay damages But an action lies even for authorised acts if they are done negligently, hence if the damage could have been prevented by the reasonable exercise of the powers conferred an action can be maintained 2 Bom L R 357 33 B 565

8 A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority or company having control over the pipe, wire or drain or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is,

(b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, compressed air or electricity or the maintenance of the drainage the case may be

* In British India the words within brackets have been substituted by 1937 In Burma for these words read the word 'Board, vide G D Ord

(a) such and so many convenient crossings bridges, arches, culverts and passages over, under or by the sides of, or leading to or from the railway as may, in the opinion of the [Provincial Government],* be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches tunnels, culverts, drains, watercourses, or other passages, over or under or by the sides of, the railway, of such dimensions as will, in the opinion of the [Provincial Government],* be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be

(2) Subject to the other provisions of this Act the work specified in clauses (a) and (b) of sub section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works

(3) The foregoing provisions of this section are subject to the following provisos, namely —

(a) a railway administration shall not be required to make any accommodation works in such manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made ,

(b) save as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the [Provincial Government],* be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic ,

(c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream

(4) The [Provincial Government]* may appoint a time for the commencement of any work to be executed under sub section (1) and if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the [Provincial Government]* may execute it and recover from the railway administration the cost incurred by him in the execution thereof

Notes —From the wording of this section it is evident that the Indian Railways Act makes it clear that the Indian Legislature intended that the opinion of the executive with reference to the sufficiency of accommodation works should be final 25 M/63^o Under this section, the purpose for which the accommodation works to be constructed is to convey water as freely as before from or to certain lands 1 aggrieved person is the owner of these lands 2 Bom L R 357

* In British India the words within brackets have been substituted by G I 1937 In Burma for these words read the word ' Governor. ' vide G R Order of

the cost to the railway administration of complying with the requisition, or such portion of the cost as the [safety controlling authority]* thinks just

Notes — "Public road" includes all roads in which the public have a legal right to use at the date when the bridge was constructed (1909) A C 138 Where the company has power to cross a road on the level such power is permissible only and it may if it chooses, cross under or over the road by means of a bridge (1846) 10 Beav 238

Removal of trees dangerous to or obstructing the working of a railway

15 (1) In either of the following cases, namely —

(a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic.

(b) when a tree obstructs the view of any fixed signal, the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub-section (1) or sub-section (2) was in existence before the railway was constructed or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(4) Such an award, subject, where made [in a Presidency-town by any Magistrate other than the Chief Presidency Magistrate or where made elsewhere]† by any Magistrate other than the District Magistrate, to revision by [the Chief Presidency Magistrate, or]† the District Magistrate, as the case may be, shall be final.

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

Notes.—This section corresponds to s. 24 of the Regulation of Railway Act 1868 (31 & 32 Vict. c. 119)

CHAPTER IV

OPENING OF RAILWAYS.

16 (1) A railway administration may, with the previous sanction of the [safety controlling authority]* use upon a railway locomotive engines or other drawn or propelled thereby :
 Right to use locomotives
 moved upon a railway by steam
 rules for the railway as may

be deemed to be necessary have been made, sanctioned and published under this Act

Notes — Tide 14 B L R I

* In British India the words within brackets have been substituted by G. I. C. 1937. In Burma for these words read the word "Board," vide G. B. Order.

† In Burma the words within brackets have been omitted by G B Order

17 (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the [safety controlling authority]* notice in writing of its intention

(2) The [safety controlling authority]* may, in any case, if it thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1)

Notes—A line on the land of the company and parallel to an existing line is a "portion of a railway" and cannot be opened without notice *A G v Great Western Railway, Co* (1872), 7 Ch App 767.

18 A railway shall not be opened for the public carriage of passengers until the [safety controlling authority]* or an Inspector empowered by the [safety controlling authority]* in this behalf, has by order sanctioned the opening thereof for that purpose

Notes—Where a company had power to make a double line and opened the down line with the sanction of the Board, it was held that the Board was not by such sanction *functus officio* and could refuse to sanction the opening of the up line *A G v Oxford etc* (1854), 2 W R 390 (Eng.)

19 (1) The sanction of the [safety controlling authority]* under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the [safety controlling authority]*—

(a) that he has made a careful inspection of the railway and rolling-stock,

(b) that the moving and fixed dimensions prescribed by the [safety controlling authority]* have not been infringed;

(c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock, are such as have been prescribed by the [safety controlling authority]*,

(d) that the railway is sufficiently supplied with rolling-stock,

(e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act, and

(f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion, together with the grounds therefor, to the [safety controlling authority]*, and the [safety controlling authority]* may thereupon order the railway administration to postpone the opening of the railway

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the [safety controlling authority]* is

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word "Board," vide G B Order of 1937

otherwise satisfied that the railway can be opened without danger to the public using it

(4) The sanction given under this section may be either absolute or subject to such conditions as the [safety controlling authority]* thinks necessary for the safety of the public

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the [safety controlling authority]*

Notes—The safety controlling authority is not bound by the report of the Inspector but has absolute discretion as regards passing an order under this section 4 Ch D 735 2 W R (1854) 330 (Eng)

20 (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to

Application of the provisions of the three last foregoing sections to material alterations of a railway

the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section

Notes—In case of a material alteration the provisions of ss 17 18 and 19 would apply Vide also (1872) 7 Ch App 767 (1854) 2 W R 330 (Eng)

21 When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to

Exceptional provision their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion as the case may be, may, in the absence of the Inspector be opened for the public carriage of passengers, subject to the following conditions, namely—

(a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion, and

(b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway

22 The [safety controlling authority]* may make rules defining

Power to make rules with respect to the opening of railways

the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Board' vide G B Order of 1937.

23 (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the [safety controlling authority]* and th may thereupon order that the railway be discontinued, or that the use of the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the [safety controlling authority]* may consider necessary for the safety of the public

(2) An order under sub section (1) must set forth the grounds on which it is founded.

Notes — *Vide A G v Great Western Railway, Co* (1877), 4 Ch D 735 C A

24 (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected and its re-opening sanctioned, in accordance with the provisions of this Act

(2) When the [safety controlling authority]* has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the [safety controlling authority]* has sanctioned its use

(3) When the [safety controlling authority]* has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the [safety controlling authority]*

25 (1) The [safety controlling authority]* may, by general or special order, authorise the discharge of any of his functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the [safety controlling authority]* might have imposed if the sanction or order had been given by itself.

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the [safety controlling authority]*

CHAPTER V

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES

[Section 26-40 — omitted by G. I Order of 1937 and G. B. Order of 1937]

41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter.†

Bar of jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission

* In British India the words within brackets have been substituted by G. I Order of 1937. In Burma for these words read the word "Board," vide G. B. Order of 1937.
† Certain words after this, repealed by G. I Order of 1937 and G. B. Order of 1937, have been omitted

Notes.—The jurisdiction of Railway Commission is exclusive (1878) 3 Ry & Can Tr. Cas 238

Traffic facilities

42 (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock *

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any [as is referred to in section 42A]†

and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of thorough traffic to and from the railway of any other railway administration at through rates

Provided as follows —

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund,

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are,

(c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period,

“(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the [Federal Railway Authority]‡

* In British India sub section (2) has been omitted by G I Order of 1937. In Burma this sub section which runs as follows is in force —

(2) A railway administration shall not make or give any undue or unreasonable pre

† In Burma for the words within brackets read the word “Board” vide G B Order of 1937

shall, on the request of any of the railway administrations, decide the matter" *.

(e) if the objection is to the granting of the rate or to the route, [the Federal Railway Authority]† shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to [the Federal Railway Authority]† to be just and reasonable,

(f) if the objection is only to the apportionment of the rate ‡ the rate shall come into operation at the expiration of the prescribed period, but the decision [of the Federal Railway Authority]§ as to its apportionment shall be retrospective: in the case of any other objection the operation of the rate shall be suspended [until the Federal Railway Authority]|| make their order in the case,

(g) the [Federal Railway Authority]¶ in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof,

(h) the [Federal Railway Authority]¶ shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route,

(i) subject to the foregoing provisions of this sub-section, the [Federal Railway Authority]¶ shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly,

(j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the [Federal Railway Authority]¶ may by general or special order prescribe

"(5) The powers conferred by this section on the Federal Railway Authority shall, in relation to any dispute between two or more minor railways be powers of the Provincial Government."**

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[42A (1) A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever

(2) Any complaint that a railway administration is contravening the provisions of this section shall be determined by the general controlling authority]*

Notes—The term railway includes all stations offices, warehouses etc constructed for the purpose or in connection with a railway. Railway companies have the right to exclude from railway premises or platforms all persons excepting those using or desirous of using the railway and may impose upon the rest of public any terms they think proper as the conditions of admittances. The word traffic in this section does not include a person going to railway station to see a friend off. 116 P L R 1911

Reserve accommodation—The reservation of separate carriages for European is not
 499 see also 23 Bom L R 809,
 50 Ind Cas 1011 45 M 215 47 B 465
 62 Ind Cas 809 22 Bom L R 809,

43 (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration

(2) In deciding whether a lower charge does or does not amount to an undue preference, the [general controlling authority]† may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interest of the public, the traffic in respect of which it is made

Notes—In cases of lower rates for particular trade the burden of proof lies on the railway administration that such rates are not due to undue preference

44 Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway.

Terminals

45 A railway administration may charge reasonable terminals

* In British India section 42A has been inserted by G I Order of 1937 In P omit this section

† In British India the words within brackets have been substituted by G I O 1937. In Burma for these words read the word "Board," vide G B Order of 4.

Power of Railway Commis-
sion to fix terminals

46 '(1) The [appropriate authority]* shall decide any question or dispute which may arise with respect to terminals charged by a railway administration.†

(2) In deciding the question or dispute, the [appropriate authority]* shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation

[(3) In this section "the appropriate authority means, in relation to a Federal Railway or an Indian State Railway, the Federal Railway Authority, and in relation to a minor railway, the Provincial Government]‡

[**46A** Any decision given by the Federal Railway Authority, the general controlling authority, or the Provincial Government, in accordance with the provisions of this Chapter, shall be final and binding on all parties concerned

46B The provisions of this Chapter have effect subject to the provisions of Part VIII of the Government of India Act 1935, relating to the Railway Rates Committee and the Railway Tribunal]§

Saving for functions of Rail-
way Rates Committees and
Railway Tribunal

CHAPTER VI

WORKING OF RAILWAYS

General

47 (1) "Every railway company, and, in the case of a railway administered by the Government, an officer to be appointed by the [general controlling authority]|| in this behalf, † shall make general rules consistent with this Act for the following purposes, namely —

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled,
- (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage,
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods,

Order of 1937

f 1937 In Burma

I Order of 1937
by G B Order of

1937 —

the provisions of this
revisions of sect on 79
Committee'
railway administra

(d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers,

(e) for regulating the conduct of the railway servants,

(f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner, and

(g) generally, for regulating the travelling upon and the use, working and management of, the railway

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay which sum may be deducted by the railway administration from his pay

(3) A rule made under this section shall not take effect until it has received the sanction of [the general controlling authority and the safety controlling authority],* and been published in the [official Gazette]†

Provided that—

[(a) where the safety controlling authority is not the same as the general controlling authority the safety controlling authority shall not refuse its sanction unless it appears to it to be necessary so to do for the purpose of securing safety and]‡

(b) where the rule is in the terms of a rule which has already been published at length in the [official Gazette]†, a notification in that Gazette, referring to the rule already published and announcing the adoption thereof shall be deemed a publication of a rule in the [official Gazette]† within the meaning of this sub-section

[(4) The safety controlling authority or, with the sanction of that authority, the general controlling authority, may cancel any rule made under this section, and the company or officer required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of those authorities, rescind or vary any such rule

Provided that where the safety controlling authority is not the same as the general controlling authority, the safety controlling authority shall not cancel any rule or refuse its sanction to the cancellation, rescinding or variation of any rule, unless it appears to it to be necessary so to do for the purpose of Securing Safety]§

“(5) Every rule purporting to have been made for any railway under section 8 of the Indian Railways Act 1879, and appearing from

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the words the Board vide G B Order of 1937

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

‡ In British India inserted by G I Order of 1937 Omit these words in Burma

§ Substituted in British India by G I Order of 1937 In Burma read the following for this —

* The Board may cancel any rule made under this section, and the authority required by sub-section (1) to make rules thereunder may at any time, rescind or vary any rule " vide G B Order of 1937

the [official Gazette]* to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section'†

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times

Rules—Rules which are not *ultra vires* although not framed under this section must be obeyed by the railway servants 12 Bom L R 930=8 Ind Cas 134

Scope—This section does not create any criminal offence It merely gives to the fines on its own officers
by the Governor General
tion dated the 2nd July
railway company merely
upon their adoption by the company It must be shown that the particular railway
received the sanction of the Governor
manner prescribed by the Act 13
rival between the time of issue of a
be counted as one day is neither

48 Where two or more railway administrations whose railways

have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to

Disposal of differences between railways regarding conduct of joint traffic
agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, [the safety controlling authority]‡ upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively

49 Any railway company, [not being a company for which the

Statutes 42 and 43 Victoria, chapter 41, provides]§ may from time to time make and carry into effect agreements with [any general controlling authority]‡ for the construction of rolling stock, plant or machinery or for leasing equipments or taking c
required for
ling-stock.

50 Any railway company, [not being a company for which the

Statutes 42 and 43 Victoria chapter 41, provides]§ may from time to time make with the [Federal Railway Authority]‡ and carry into effect, or, with the sanction of the [Federal Railway Authority]|| make with any other railway

* Substituted by G I Order of 1937

† In Burma sub section (5) has been omitted by G B Order of 1937

noted by G I Order of
B Order of 1937
Order of 1937
ted by C I Order of
of 1937

administration, and carry into effect any agreement with respect to any of the following purposes, namely —

(a) the working, use, management and maintenance of any railway,

(b) the supply of rolling stock and machinery necessary for any of the purposes mentioned in clause (a) and of officers and servants for the conduct of the traffic of the railway,

(c) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance,

(d) the interchange, accommodation and conveyance of traffic being on, coming from or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic,

(e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are, from time to time, respectively authorised to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into

51 Any railway company [not being a company for which the Establishment of ferries and Statutes 42 and 43 Victoria chapter 41, roadways for accommodation of provides],* may from time to time exercise traffic with the sanction of the [general controlling authority],† all or any of the following powers, namely .—

(a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry,

(b) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section,

(c) It may provide and maintain on any of its bridges, roadways for foot-passengers cattle carriages, carts or other traffic,

(d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway,

(e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway,

(f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the [Provincial Government] †

* Omitted in Burma by C. L. Order 1937

† In British India the words, within brackets have been substituted by G. I. Order of 1937. In Burma for these words, read the word "Board," vide G. B. Order of 1937.

****51A** (1) Any railway company [not being a company for which

Additional power to provide
and maintain transport services

the Statutes 42 and 43 Victoria, chapter 41, provides],† may frame a scheme for the provision and maintenance of a motor

transport or aircraft service for passengers animals or goods with a terminus at or near a station on the railway owned or managed by such company

(2) The scheme shall be submitted to the [general controlling authority]† which may sanction it subject to such modifications and conditions as he may prescribe

(3) The scheme shall be published in the [official Gazette]§ and thereupon the railway company shall, subject to sub-section (4) have the power to provide and maintain a service in accordance therewith

(4) In respect of any service provided and maintained by any railway company under this section,—

(a) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways and no property used conclusively for purposes of the service shall be deemed to be included in the railway or its rolling stock and

(e) all enactments and rules for the time being in force relating to motor vehicles aircraft and roads shall apply accordingly

(5) The [general notice of its intention so to do withdraw its sanction to any scheme mentioned under sub section (2) or may modify the scheme or impose further conditions on it

52 Every railway administration shall, in forms to be prescribed by the [general controlling authority]† prepare half-yearly or at such intervals as the [general controlling authority]† may prescribe such returns of its capital and revenue transactions and of its traffic as the [general controlling authority]† may require and shall forward a copy of such returns to the [general controlling authority]† at such times as it may direct

Returns

Carriage of property

53 (1) Every railway administration shall determine the maximum load for every wagon or truck in its possession and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the [safety controlling authority]† for the class of axle under the wagon or truck

* 1890 ACT IX

54 (1) Subject to the control of the [Federal Railway Authority]* a railway administration may impose conditions, not inconsistent with this Act or with any general rules thereunder, with respect to the receiving, forwarding or delivering of any animals or goods

Power for railway administration to impose conditions for working traffic

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

Notes—Ss 47 and 55 of the Act empower the railway company to make rules determining the conditions under which such liability shall vest, and particularly, at what point of time it shall vest. But such rules must be consistent with this Act, i.e., reasonable, otherwise they will be void and inoperative. 31 O 951=8 C W 725. Under clause (1) the conditions that may be empowered in a bye law are conditions with respect to the receiving, forwarding or delivering of articles. It cannot be said that bye law prescribing what the consignor or consignee is to do after the goods are lost comes within these words. 76 P R 1908=139 P W R 1908.

55 (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession

Lien for rates terminals and other charges

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or where there are no such newspapers, in such manner as the [Federal Railway Authority]* may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (1) or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections, the

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Board,' vide G. B. Order of 1937.

railway administration may recover by suit any such rate, terminal or other charges as aforesaid or balance thereof

Notes—This section has no application where the plaintiffs at the request of the railway company wanted to remove the goods but were not allowed to do it 47 All 549 = 23 A L J 398—87 Ind Cas 579—A I R 1925 All 656

56 (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the animals or goods

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto

Notes—Vide 44 M 823—41 M L J 205 1 Pat 15 1921 M W N 422 3 Bom L R 260

57 Where any animals, goods or sale proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale proceeds

Notes—No demurrage should be charged for the period taken for enquiry as regards the identity of the consignee 63 Ind Cas 256—2 Pat L T 523

58 (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods, in order that their description may be ascertained the railway administration may, (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods

(4) If any difference arises between a railway servant and the owner or person having charge or the consignee, of any goods which have been brought to be carried or have been carried on a railway respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid

Notes — *Vide* 36 P R 1895 Cr

59 (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station master or other railway servant in charge of the place where he brings the goods upon the railway or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in [sub-section (2)]* having to his knowledge been given, may refuse to carry them or may stop their transit

(4) If any railway servant has reason to believe any such goods to be contained in a package, with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the

* Substituted by Act IX of 1896, s 9

Government, or to any goods which an officer, soldier, sailor "airman" or police-officer or 'a member of the [Indian Territorial Force or of the Auxiliary Force, India,†]‡ may take with him upon a railway in the course of his employment or duty as such

60 At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorised by the administration or administrations concerned

61 (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall on the application of the person by whom or on whose behalf the charge has been paid render to the applicant an account showing how much of the charge comes under each of the following heads, namely —

(a) the carriage of the goods on the railway,

(b) terminals,

(c) demurrage, and

(d) collection, delivery and other expenses,

but without particularising the several items of which the charge under each head consists

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant and the account must be rendered by the administration within two months after the receipt of the application

Carriage of Passengers.

62 The [safety controlling authority]§ may require any railway administration to provide and maintain in proper order in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the [safety controlling authority]§ has approved

63 Every railway administration shall fix, subject to the approval of the [general controlling authority]§ the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English, or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more

* Inserted by Act V of 1927

† The words within quotations have been substituted by Act VI of 1923

‡ In Burma for the words within brackets substitute the words Territorial Force or Auxiliary Force vide G B Order of 1937

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Board vide G B Order of 1937

of such vernacular languages, as the [general controlling authority],* after consultation with the railway administration, may determine

64 (1) On and after the first day of January, 1891, every railway administration shall in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles be provided with a closet

Notes—This provision is especially made in India

65 Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English, and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station

Notes—Time tables and tables of fare are exhibited for facility of passengers

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare be supplied with a ticket, specifying the class of carriage for which and the place from, and the place to which, the fare has been paid and the amount of the fare

(2) The matters required by sub section (1) to be specified on a ticket shall be set forth—

(a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(b) if the class of carriage to be so specified is any other than the lowest class then in English

Notes—Supply of tickets cannot be refused if fares are offered

67 (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled

Notes—Under this section 'fares' shall be deemed to be accepted and tickets to be issued subject to the conditions of there being room available in the train for which the

* The words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word 'Board' vide G B Order of 1937

tickets are issued 80 M 417 This section not only operates in cases where there are second class compartments but there is no room in those compartments 103 Ind Cas 316

68 No person shall without the permission of a railway servant enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket

Prohibition against travelling without pass or ticket

Notes—Such travelling is not illegal where the intention to defraud is absent 41 C 279=25 C L J 610 90 P L R 1 13 M 31 12 C 142 192 35 Ind Cas 660

69 Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant

Exhibition and surrender of passes and tickets

70 A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued

Return and season tickets

Single ticket—The sale of a single ticket is not penal under this Act 1 Weir 82

71 (1) A railway administration may refuse to carry except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d) a person suffering from any infectious or contagious disorder

Power to refuse to carry persons suffering from infectious or contagious disorder

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station master or other railway servant in charge of the place where he enters upon the railway

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway

Notes—Railway company may refuse passengers suffering from infectious disease

CHAPTER VI (A)*

LIMITATION OF EMPLOYMENT OF RAILWAY SERVANTS

Definitions

71A In this Chapter unless there is anything repugnant in the subject or context—

(a) the employment of a railway servant is said to be "essentially intermittent" when it has been declared to be so by the authority empowered in this behalf on the ground that it involves long periods of inaction during which the railway servant is on duty but is not called upon to display either physical activity or sustained attention and

* Inserted by Act IV of 1930

(b) except in section 71B 'a railway servant' means a railway servant to whom this Chapter applies

71B This Chapter applies only to such railway servants or classes of railway servants as the [Central Government]* may, by rules made under section 71E, prescribe

71C (1) A railway servant other than a railway servant whose employment is essentially intermittent, shall not be employed for more than sixty hours a week on the average in any month

(2) a railway servant whose employment is essentially intermittent, shall not be employed for more than eighty four hours in any week

(3) Subject to rules made under section 71E, temporary exemptions of railway servants from the provisions of sub section (1) and sub section (2) may be made—

(a) when such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway, in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling-stock or in any emergency which could not have been foreseen or prevented and

(b) in cases of exceptional pressure of work not falling within the scope of clause (a)

Provided that a railway servant exempted under clause (b) shall be paid for overtime at not less than one and a quarter times his ordinary rate of pay

71D (1) A railway servant shall be granted, each week commencing on Sunday, a rest of not less than twenty four consecutive hours

Provided that this sub-section shall not apply to a railway servant whose employment is essentially intermittent, or to a railway servant to whom sub-section (2) applies

(2) The [Central Government]* may by rules under section 71E specify the railway servants or classes of railway servants to whom periods of rest may be granted on a scale less than that laid down in sub-section (1), and may prescribe the periods of rest to be granted to such railway servants

(3) Subject to rules made under section 71E, temporary exemptions from the grant of periods of rest may be made in the cases or circumstances specified in sub section (3) of section 71C

Provided that a railway servant shall as far as may be possible, be granted compensatory periods of rest for the periods he has foregone

71E (1) The [Central Government]* may make rules—

(a) prescribing the railway servants or classes of railway servants to whom this Chapter shall apply

(b) prescribing the authorities who may declare that the employment of any railway servant or class of railway servants is essentially intermittent

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Board vide G. B. Order of 1937.

Bill as re drafted is in accordance with the Washington Convention which does not make the payment of overtime obligatory except when the extra hours of duty are due to exceptional pressure of work and until the question has been further examined we do not consider it advisable to impose a statutory obligation to pay overtime in cases falling under clause (a). We are informed that the present practice varies on different railways and we think the Government should investigate the question whether some provision ought not to be made either for the payment of overtime in such cases or for a compensatory period of rest.

Section 71D — The body of sub section (1) gives effect to article 2 of the Geneva Convention and the proviso is based upon article 4 read with paragraph 2 of Article 1. Sub section (2) and (3) are based on article 4. The proviso to sub section (3) is based upon article 5 of Geneva Convention.

Section 71E — Section 71E contains much reduced rule making power necessary to implement the provisions of the Bill.

Section 71F — We are of opinion that the investigation recommended by us in connection with the proviso to clause 71C should also cover the question of the payment of overtime or grant of compensatory periods of rest to railway servants who may have to work for extra time in the circumstances contemplated by this section.

Section 71G — The scheme of this section is that the Governor General in Council should appoint suitable persons who will be independent of the railway administrations, to make regular inspections of labour conditions on railways in order to furnish Government with reliable and independent evidence of the manner in which the provisions of the law are being carried out. — *Report of the Select Committee*

CHAPTER VII

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS

72 (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act 1872.

Measure of the general responsibility of a railway administration as a carrier of animals and goods

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it—

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the [Federal Railway Authority]*

(3) Nothing in the Common Law of England or in the Carriers Act, 1865 regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

Notes — A horse carried by the defendant railway company was injured on the way and died in a few days after. The horse was not carried at the owner's risk nor was

ordinary prudence dictates were taken by the company's servants. The burden of proof cannot be affected by the fact that the plaintiff had put forward and failed to make good a theory of his own to account for the accident. 3 A L R 94. Where a special

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Board' vide G. B. Order 1937.

agreement otherwise known as Risk Note Form B sanctioned by the Governor General in Council under clause 2 of this section was given by a consignor of goods with a railway company the company was exempt from all liability for loss occasioned by any cause whatsoever the reason being that the company is not in such cases a bailee within the meaning of s 152 30 C 257=7 C W N 370 The intention of the legislature in enacting would appear to have been to define the liability of carriers by railway as identical with that of bailees in ss 151 152 and 161 of the Contract Act 97 P R 1836 see also

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risk note executed on a consignment of goods for carriage by a railway company and signed by the consignor of the goods where it is in proper form falls within the provisions of this section and it is not open to the Court to refuse to enforce the terms of such agreement which is legally valid under the provisions of this statute 18 A 42=A W N 1895 150 An agreement in Form B relieves the railway company from liability in respect of any claim for compensation no matter how the loss destruction deterioration or damage was caused and the mere fact that such loss etc was due to the goods being negligently loaded in open wagons does not affect the question 113 P R 1903=15 P L R 1909 see also 5 O C 153 2 N L R 125 17 C W N 635 17 C W N 529

A risk note not signed by consignor on his behalf but filed by a railway clerk cannot relieve the company of its responsibility 30 Ind Cas 143 20 C W N 685 This section is applicable to the luggage of a passenger whether in charge of the passenger or the same as required by the railway company for the not at owner's risk is 18 A W N 1900, 111

In a suit for damages occasioned by such a loss the plaintiff need not prove how the loss was caused but on proof of the loss the company is bound to show that the loss occurred under circumstances which could exempt a bailee from responsibility for it 17 M 445

73 (1) The responsibility of a railway administration under the

Further provision with respect to the liability of a railway administration as a carrier of animals

last foregoing section for the loss destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed in the case of elephants or horses five hundred

rupees a head, or in the case of 'mules, * camels or horned cattle fifty rupees a head or, in the case of "donkeys" *, sheep, goats, dogs or other animals ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid

(3) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation

Notes—When the consignor omitted to declare the value of the goods and animals the railway company is not liable for more than Rs 10 per each head of the animals carried 33 Ind Cas 143

Further provision with respect to the liability of a railway administration as a carrier of luggage

74 A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor

Notes—

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75 (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the articles declared to be therein

Notes—When a passenger fails to make a declaration in respect of a luggage belonging to him which is valued at a sum exceeding Rs 100 under this section the railway administration is free from liability for the loss thereof both as regards scheduled and non scheduled articles contained therein 56 P R 1897 A railway passenger whose box containing clothes gold and silver ornaments and currency notes of the value of Rs 100, has been entrusted to the railway company's servants for conveyance in the luggage van and has been lost or stolen cannot recover the value of the box or of any part of its contents from prescribed in sub-section 1 The words include a passenger's luggage dealt with second schedule covers currency notes 7 tion given by this section extends to mentioned in cl (1) of the second schedule is composed of article mentioned in the s Ind Cas 951 33 B 103 see also 19 C W N 1081 27A 463 34 A 49 Where the contents of parcel are declared by the plaintiff but the railway company did not demand any insurance charge held that the declaration made by the plaintiff was a sufficient declaration under this section 7 A L J 606 6 Ind Cas 233 The words loss deterioration or destruction contained in this section include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof Under this section it is necessary both the value and contents of a parcel (if over Rs 100 in value) should be declared

Further provision with respect to the liability of a railway administration as a carrier of luggage

74. A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of a passenger unless a railway servant has booked and given a receipt therefor

Notes—The receipt given to a passenger under this section is a token of delivery to the luggage belonging to or in charge of which a receipt had been given under railway administration for carriage by

75 (1) When any articles mentioned in the second schedule

Further provision with respect to the liability of a railway administration as a carrier of articles of special value

are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds

one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the articles declared to be therein

Notes—When a passenger fails to make a declaration in respect of a luggage belonging to him which is valued at a sum exceeding Rs 100 under this section the railway administration is free from liability for the loss thereof,

include a passenger's luggage dealt w second schedule covers currency notes 7. tion given by this section, extends to mentioned in cl (1) of the second schedul is composed of article mentioned in the s Ind Cas 951—33 B 703 see also 19 C contents of parcel are declared by the plan any insurance charge held that the sufficient declaration under this section 7 A L J 606=6 Ind Cas 333 The words 'loss, deterioration or destruction' contained in this section include loss caused by the criminal misappropriation of the parcel by a servant of the railway administration in charge thereof Under this section it is necessary that both the value and contents of a parcel (if over Rs 100 in value) should be declared before

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76 In any suit against a railway administration for compensation for loss destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway it shall not be necessary for the plaintiff to prove how the loss destruction or deterioration was caused

Notes—This section provides that in any suit against a railway company for compensation for loss or destruction of goods delivered to it for carriage it shall not be necessary to prove how the loss or destruction was caused. It is enough for the plaintiff to prove the goods were destroyed and prove that they have exercised the care if they are to escape from

407 Where there was a risk note the onus lay upon the plaintiff to prove that the loss was not caused by any of the risks undertaken by the owner under the risk note 41 C 576=19 C W N 95-19 C L J 142 In a suit for compensation for non delivery of an approved risk note it is for the railway to prove that the loss was caused by the

ants 13 Bur L T 390 see also 23 Bom 49 Ind Cas 498 22 C W N 622 5 Ind Cas 260 72 Ind Cas 779 21 A L J 896 30 C W N 209 In a suit to recover damages for short delivery of goods consigned under the Risk Note Form B the railway company cannot escape liability by merely admitting the loss but it must have evidence to show that the goods were lost 45 Bom L R 1201 63 Ind Cas 241 The railway company cannot plead in the defence the risk note as freeing it from all responsibility, when loss of the property in question is due to the wilful neglect of the railway administration or theft or neglect of its servants 79 Ind Cas 193=3 Patual form he must prove the consignment and by or its servant 86 not apply to contracts

limiting the liability of the railway company under this Act 78 Ind Cas 449

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway

Notes—Though the section confers a privilege on railway administration it does not exempt the company from the liability arising from the breach of contract to carry the goods and deliver the same at the proper destination. The railway company will be

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whose line the goods were subsequently lost 12 C W N 165 23 Bom L R 866 The notice of claim under this section must be served under s 140 of the Act on the Agent of the company 21 C W N 751 But the law does not require that the notice should be

rules or course of conduct whereunder the right to receive such notice is delegated by the Agent to the District Traffic Superintendent notice to the latter is no good 1919 Pat 150-49 Ind Cas 498 see also 19 Ind Cas 673 Where there is loss of consignment notice or loss to the railway company under this section is necessary 1922 Lah 72 a notice addressed to the Deputy Traffic Manager is valid 27 Bom L R 1500-50 B 81 Notice must be given within six months from delivery of goods of company 80 Ind Cas 725 No notice is necessary where railway company does not allege loss but non receipt of articles L R 5 A 665 80 Ind Cas 725-A 1 R 19 5 All 144 The notice required to be given by s 77 need not state the money value of the claim and the omission does not therefore vitiate it 89 Ind Cas 490

78 Notwithstanding anything in the foregoing provisions of this

Exoneration from responsibility in case of goods falsely described

Chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account

materially false has been delivered under sub-section (1) of section 58 if the loss, destruction or deterioration is in any way brought about by the false account nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account

79 Where an officer soldier sailor * 'airman † or follower,

Settlement of compensation for injuries to officers soldiers airmen and followers on duty

while being or travelling as such on duty upon a railway belonging to and worked by, the Government, loses his life or receives any personal injury in such

circumstances that if he were not an officer soldier sailor * 'airman † or follower being or travelling as such on duty upon the railway compensation would be payable under Act No XIII of 1855 or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military naval * 'or airforce † regulations to which he was immediately before his death, or is subject, be determined in accordance with those regulations, and not otherwise

80 Notwithstanding anything in any agreement purporting to

Suits for compensation for injury to through booked traffic

limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for

compensation for loss of the life of or personal injury to a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the

* Inserted by Act 25 of 1934

† Inserted by Act 10 of 1907

obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred

Notes —A railway company receiving goods for carriage over a foreign railway is not bound to insure them in their system 7 A L J 339
consignment and examination railway company to refuse 772=21 Ind Cas 413

has the option of delivered by the injury or destruction Cas 428, 61 Ind
suit will lie against a railway company it is shown that the loss occurred while a decree be passed against both the companies Under ss 70 and 80 of the Act loss of goods the owner whether such loss occurred by reason Cas 440 Where goods are handed over to one another railway company, the latter railway company is not liable unless the loss occurred on its railway 6 Lah 499=26 Punj L R 858 In a suit for damages for short delivery of goods the company must prove loss before relying on the exemption clause in a risk note and then the plaintiff should prove wilful neglect in order to hold company liable 1924 Nag 268

81 [Repealed by Act IX of 1896, s 5]

82 (1) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kindsoever shall without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea to the extent to which it would be responsible under the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862 if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration

CHAPTER VIII

ACCIDENTS.

Report of railway accidents 83 When any of the following accidents occur in the course of working a railway, namely, —

Order of 1937.

- 86** Whenever any person injured by an accident on a railway claims compensation on account of the injury any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the cost of the examination as it or he thinks fit

CHAPTER IX

PENALTIES AND OFFENCES

Forfeitures by Railway Companies

- 87** If a railway company fails to comply with any requisition made under section 13 it shall forfeit to the [safety controlling authority]* the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues

Notes—Section 13 makes provisions for fences screens gates and bar by railway company

- 88** If a railway company moves any rolling stock upon a railway by steam or other motive power in contravention of section 16, sub section (2), or opens or uses any railway or work in contravention of section 18 section 19 section 20 or section 21 or re-opens any railway or uses any rolling stock in contravention of section 24, it shall forfeit to the [safety controlling authority]* the sum of two hundred rupees for every day during which the motive power railway, work or rolling stock is used in contravention of any of those sections

Notes—Sections 16 18 19 20 21 and 24 lay down the procedure to be followed in opening or re opening railways

- 89** If a railway company fails to comply with the provisions of section 54 sub-section (2) or section 65 with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway it shall forfeit to the [Federal Railway Authority]* the sum of fifty rupees for every day during which the default continues

- 90** If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules [and the keeping thereof open to inspection]† it shall forfeit to the

193

by

these words have been omitted

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[general controlling authority]* the sum of fifty rupees for every day during which the default continues

[Provided that where the safety controlling authority is different from the general controlling authority, the safety controlling authority may take proceedings for the recovery of the said penalty if in the opinion of the safety controlling authority the default is a default which relates to safety]†

91. If a railway company refuses or neglects to comply with any decision of the [safety controlling authority]* under section 48, it shall forfeit to the [safety controlling authority]* the sum of two hundred rupees for every day during which the refusal or neglect continues

Notes—This penalty is imposed for failure to comply with the decision of Governor General in Council regarding the differences of two railway companies

92 If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the [authority to which the return should have been submitted]* the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return

93 If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck, or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the [appropriate authority]* the sum of twenty rupees for every day during which either section is contravened

[In this section "the appropriate authority" means in relation to a contravention with respect to the maximum load to be carried in any wagon or truck, the safety controlling authority and in relation to any other contravention, the general controlling authority]†

Notes—Carrying extra passengers are made punishable

94 If a railway company fails to comply with any requisition of the [safety controlling authority]* under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the [safety controlling authority]* has approved, it shall forfeit to the

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Board the G B Order of 1937

† The words within brackets have been inserted by G I Order of 1937 In P these words have been omitted

[safety controlling authority]* the sum of twenty rupees for each train run in disregard of the requisition

95 If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females under section 64 or the provision of closets therein, it shall forfeit to the [general controlling authority]* the sum of twenty rupees for every train in respect of which the default occurs

96 If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the [safety controlling authority]* the sum of one hundred rupees for every day during which the omission continues

97 (1) When a railway company has through any act or omission forfeited any sum† under the foregoing provisions of this Chapter, the sum shall be recoverable‡ by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred

[(2) Nothing in this Chapter shall be construed as requiring any authority to recover any penalty in any case in which it thinks it proper to refrain from so doing]§

98 Nothing in those provisions shall be construed to preclude the [appropriate authority]* from resorting to any other mode of proceedings instead of or in addition to, such a suit as is mentioned in the last foregoing section for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act

Offences by Railway Servants

99 If a railway servant whose duty it is to comply with the provisions of section 60 negligently or, wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees

100 If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the

by G. I. Ord. of 1937
Order of 1937
937
and vide G. B.
substituted by
to recover
vide C. B.

safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both

Notes—The procedure of the first part is like that of a summons case and the procedure of the second part is like that of a warrant case 5 M L T 204

101 If a railway servant when on duty, endangers the safety of any person—

Endangering the safety of persons

(a) by disobeying any general rule made, sanctioned, published and notified under this act or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission

he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to five hundred rupees, or with both

Notes—The offence consists in (1) endangering the safety of any person

person's safety 8
under s 101 (b)
as required by
provisions is upon the

prosecutions 21 Ind Cas 996 As regards punishment the gravity of the offence should be estimated not by actual ultimate consequences but by the risk involved for the rule breaker might be punished even though no accident occurred 15 Bom L R 702=37 B 685 see also 32 C 73 4 L B R 353 11 C W N 173 13 P R 1906 Cr Rat Un Cr C 721 1 Weir 1869 1 Weir 868 4 L B R 139 No sanction is necessary to the institution of a complaint of an offence under this section 9 P R 1892 Cr A station master is not merely bound to give the proper orders but bound to see that they are properly carried out 22 A L J 20 A disregard of rule by station master is an offence 6 Lah 321=26 Cr L J 685=86 Ind Cas 61 It is incumbent on the prosecution to prove (1) that the accused committed a breach of the rule and (2) that he endangered the safety of passengers thereby 26 O C 363=81 Ind Cas 917 25 Cr L J 1093=1924 Oudh 250 It is not the duty of driver to stop train merely because wayfarers shunt to him A I R 1933 Pat 94=34 Cr L J 576 Where charge is on one set of facts conviction on any other set of facts is illegal A I R 1933 Sind 295=1933 Cr G 795 Where a station master allows a goods train to run over the loop line on receiving a signal from the pointsman when in fact one of the points was not in position to allow persons on the goods train to pass over the loop line, the offence under s 101 of the Act is made out following the train to run A I R 1936 All 745

102 If a railway servant compels or attempts to compel, or

Compelling passengers to enter carriages already full

causes any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein

or thereon under section 63, he shall be punished with fine which may extend to twenty rupees

103 If a station master or a railway servant in charge of a section

Omission to give notice of accident

of a railway omits to give such notice of an accident as is required by section 83 of the rules for the time being in force

section 84 he shall be punished with fine which may extend to fifty rupees

Obstructing level crossings **104** If a railway servant unnecessarily—

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level or

(b) keeps a level-crossing closed against the public,
he shall be punished with fine which may extend to twenty rupees

105 If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees or with imprisonment which may extend to one year, or with both

Other offences

106 If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable

107 If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss injury or damage which may be caused by reason of such goods having been so brought upon the railway

108 If a passenger, without reasonable and sufficient cause makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees

what constitutes reasonable and sufficient cause in the circumstances of each case. Where a passenger is justified in pulling the chain to stop the train, the cause must be reasonable and sufficient cause to be determined according to the circumstances. See A. I. R. 1936 Pat 493. This section does not affect the safety of passengers who are on the platform. See Bom. L. R. 400. I. R. 1926 Bom. 283. The risk of a passenger on a train by stopping the train has to be considered for the purpose of determining whether the cause is sufficient to stop the train by pulling the chain. It cannot be considered independently of the circumstances to the person pulling the chain. If a passenger pulling the cord is in company with other passengers, he cannot be said to have acted rashly. It is not to be said to the passenger that the risk is very great and that he must have just cause for stopping the train. The necessity or the time and train. See A. I. R. 1927 All 617. Where the accused

pulled the alarm signal while the train was in motion and sought to explain the same on the ground that a fellow passenger had thrown out his account books held that he had reasonable and sufficient cause for pulling the alarm signal and that consequently no offence under this section has been committed 8 Lah 796=102 Ind Cas 779=28 Cr L J 603-28 P L R 455=1 I R 1927 Lah 476

109 (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63 refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees

Notes—If a person objects to the coming in of more passengers and stands against the door, he commits an offence falling under s 109 (2) and s 120 (c) 31 P W R 1910 Cr =7 Ind Cas 355-11 Cr L J 451=20 P L R 1910

Reserved Compartment—A non European can be punished for entering into a compartment reserved for Europeans 45 M 215 These provisions of the Act confer a right upon the occupants of a compartment to resist the entry of a new passenger when the compartment contains the full number 1 Pat 260

110 (1) If a person, without the consent of his fellow-passengers if any, in the same compartment, smokes in any compartment, except a compartment specially provided for the purpose he shall be punished with fine which may extend to twenty rupees

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1) be removed by any railway servant from the carriage in which he is travelling

Compartment—The term compartment means a division of a railway carriage separated from the other divisions by partitions right up to the roof of the carriage, each such division being completely screened off from its adjoining division 24 B 293 1 Bom L R 688

111 If a person without authority in this behalf wilfully injures, any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees

Fraudulently travelling or attempting to travel without proper pass or ticket **112** If a person with intent to defraud a railway administration,—

(a) enters in contravention of section 68 any carriage on a railway, or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of return ticket a half thereof which has already been so used,

he shall be punished with fine which may extend to one *

rupees in addition to the amount of the single fare for any distance which he may have travelled

Entry—The mere entry into a railway carriage without ticket, without any intent to defraud the company, does not constitute an offence under this section 27 P R 1905 Cr = 124 P L R. 1905 Where the accused travelled with his 6 years old son from one station to another without paying his half ticket he is liable as an abettor 1 Wer 809 (F B) An entry without any intention to defraud is not offence 21 Cr L J 665

Single fare—The total fine imposed shall not exceed Rs 100 plus the single fare mentioned in the section 17 C P L R 32 Where the accused has travelled with a forged pass he can be convicted under ss 419 511 of the Penal Code 21 M L J 748 = 11 Ind Cas 590 This section does apply where a person after having entered a carriage with a 9 C P. entry is expired

one is used by another, and absence of consent by former is not contended, former guilty of abetment A I R 1933 Bom 412 = 35 Bom L R 875 = 146 Ind Cas 1162

113 (1) If a passenger travels in a train without having a proper pass or a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination, or to deliver up his pass or ticket immediately on requisition being made therefor under

section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has immediately after incurring the charge and before being detected by a railway servant, notified to the railway servant on duty with the train the fact of the charge having been incurred, by one rupee, two annas, or eight annas, and

(b) in any other case, be six rupees, one rupee or three rupees, according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class, or in a carriage of the lowest class or in a carriage of any other class or kind.

Provided that such excess charge shall in no case exceed,—

(a) where the liability to pay it arises under sub-section (1).

the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section or,

(b) where such liability is not made, the amount of the difference between the charge and the fare made by the passenger.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf be recovered by the Magistrate from the passenger as if it were a fine imposed on the passenger by the Magistrate, and shall, as it is recovered, be paid to the railway administration.

Scope—The provisions in this section which directs that on failure to pay on demand excess charge and fare when due the amount shall on application be recovered by a Magistrate as if it were a fine does not authorise the Magistrate to impose imprisonment in default. The excess charge and fare referred to in this section is not a fine, though it may be so treated for the purpose of recovery. 166 20 M 385 L B R (1872 1892)

The General Clauses Act makes s 61 of the charge and fare ordered to be paid under rate proceeding under this section is open to revision. 13 P R 169 It is an offence under this section to travel without a ticket. 1 Weir 571 Section 133 does not apply to a proceeding under this section neither s 31 of the Court Fees Act U B R (1832 1836) Vol I 200 The issue of distress warrant to realise penalty without any inquiry is illegal. 21 C W N 195 The remedy provided by s 113 clause 4 is exclusive and consequently a claim by a railway company to recover the ordinary excess fare from passenger travelling without a ticket can be entertained only by a Magistrate and a suit to enforce it does not lie in a Civil Court. 28 Bom L R 443=60 B 215 91 Ind Cas 742=A I R 1926 Bom 266 The offence is not complete until the fare has been demanded.

L R 1066 Under sub section (4) intention to defraud is not necessary proceeding is not prosecution for offence. A I R 1933 Bom 59--31 Cr L J 239

114 If a person sells or attempts to sell or parts or attempts to part with the possession of, any half * of a return ticket in order to enable any other person to travel therewith or purchases such half of a return ticket he shall be punished with fine which may extend to fifty rupees and if the purchaser of such half of a return ticket travels or attempts to travel therewith he shall be punished with an additional fine which may extend to the amount of the single fare for "the journey" * authorised by the ticket.

Notes—This section applies to purchasers and transferees of ticket and not to transferors alone. 155 Ind Cas 697=36 Cr L J 67=A I R 1935 Sind 90 (F B)

115 That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the Disposal of fines under the two last foregoing sections.

* The words quoted have been inserted by Act IX of 1906 s 6

railway administration before any portion of the fine is credited to the Government

116 If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees

Altering or defacing pass or ticket

117 (1) If a person suffering from an infectious or contagious disorder enters to travel upon a railway in contravention of section 71 sub section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon shall be punished with fine which may extend to twenty rupees in addition to the forfeiture of any fare which either of them may have paid and of any pass or ticket which either of them may have obtained or purchased and may be removed from the railway by any railway servant

(2) If any such railway servant as is referred to in section 71, sub section (2) knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers he shall be punished with fine which may extend to one hundred rupees

118 (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees

(2) If a passenger after being warned by a railway servant to desist, persists in travelling on the roof steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant

Passenger—A seller of fruit at the platform is not a passenger. 1 Weir 53 The 'passenger' denotes a person who without the permission of a railway servant can enter as a passenger. 15 R.M. ho enters a compartment. A I R 1936 All 439

119 If a male person, knowing a carriage compartment room or other place to be reserved by a railway administration for the exclusive use of females, enter the place without lawful excuse or, having entered it remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Entering carriage or other place reserved for females

120 If a person, in any railway carriage or upon any part of a railway—
 a railway

(a) is in a state of intoxication or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(c) wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased and may be removed from the railway by any railway servant

Notes—Removal is not justified where a passenger is travelling without ticket 68 Ind Cas 846 but see 1923 Lah 71 The word person includes railway officials 44

This section
Where an
person
is
prosecuted and
omitted by
Cas 575=38

Vide—1 N L R 139 6 Lah L J 469

No conviction is possible unless actual alleged words amounting to obscene or abusive language are proved 26 Cr L J 417=85 Ind Cas 33=A I R 1925 Lah 151 but see A I R 1936 All 140=37 Cr L J 385=160 Ind Cas 1038

121 If a person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be punished with fine which may extend to one hundred rupees

Obstructing railway servant in his duty

convicted for
he claims
to a railway
appointed is
e a person
discharge of
uch railway
L R 715

Trespass and refusal to desist from trespass

122 (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by such servant or other person

Notes—Section 47 has no bearing on the question and no bye law would have reference to a trespass by a member of the general public upon railway lines as contemplated by this section 24 Ind Cas 348 Where the railway company is a servant owner the dominant owner can enter the premises to do the necessary work 22 B 525 Sub section (1) makes unlawful entry punishable and sub section (2) provides for cases where original entry was lawful as well as unlawful 48 Ind Cas 696 21 C W N 675 Crossing railway line to reach platform is offence A I R 1933 Mad 372=84 Cr L J 291 Intention of person entering on railway is of no account in determining whether entry is lawful A I R 1933 All 891 Where railway platform to which general public have free access without tickets permission of railway authorities is implied and entry is not unlawful A I R 1933 All 891 The word unlawful in this section means contrary to law as laid down in the statute There is one form of unlawful entry for which punishment is provided in s 112 read with s 68 6 Pat L T 437=83 Ind Cas 522=26 Cr L J 1162 Two things are necessary to bring a man under this

T. 11

lway as defined in s 3 (4) and secondly the entry
ion 103 Ind Cas 104=28 Cr L J 613 A
into the platform is lawful has no right to enter
o trespass on the railway line because lawful
entry into one part of the railway does not make entry into every part of a railway lawful.
A L R 1934 Mad 671=40 L W 664

123 If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees

Disobedience of omnibus drivers
to directions of railway servants

124 In either of the following cases namely —

(a) if a person, knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any animal, vehicle or other thing across the railway,

(b) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate, the person shall be punished with fine which may extend to fifty rupees

125 (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871

Cattle trespass

(2) If any cattle are wilfully driven, or knowingly permitted to be on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle trespass Act, 1871

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871

(4) The expression "public road" in sections 11 and 26 of the Cattle-trespass Act, 1871 shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections

(5) The word "cattle" has the same meaning in this section as in the Cattle-trespass Act, 1871

Owner—The owner of cattle which have been allowed to stray upon a railway line in consequence of the negligence of their keeper is not liable to punishment. S A L J 1219
18 M 228

Maliciously wrecking or at-
tempting to wreck a train

126 If a person unlawfully—

(a) puts or throws upon or across any railway any wood, stone or other matter or thing, or

(b) takes up, removes, loosens, or displaces any rail, sleeper or other matter or thing belonging to any railway, or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person, travelling or being upon the railway, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years

Notes—Placing a stone on the rail even when no train is due is an offence under this section Rat Un Cr O 899 The destroying of the time table at a railway station is an offence under this section 1 Weir 875 An offence under this section must be tried by the District Magistrate U B R (1892 96) Vol I 302 An abetment of an offence under this section is also punishable 1 Bom L R 682 An offence punishable under s 130 read with s 126 (a) is not exclusively triable by a Court of Session but can be tried by a competent Magistrate 43 B 888

127 If a person unlawfully throws or causes to fall or strikes at,

Maliciously hurting or attempting to hurt persons travelling by railway

against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger

the safety of any person being in or upon such rolling-stock, or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years

Notes—An offence under this section is punishable with imprisonment for a term which may extend to 10 years or with transportation for life and is triable only by a Court of Session or by a Magistrate invested with special powers under s 80 of the Criminal Procedure Code 14 C P L R 176 Section 5 of Act VI of 1864 is not applicable to offences punishable under this section 11 C P L R 8 Cr An offence under this section and the offence of rescuing a person arrested for former offence are distinct offences and must be tried separately 29 C 385—C C W N 468

128 If a person, by any unlawful act or by any wilful omission

Endangering safety of persons travelling by railway by wilful act or omission

or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or

attempts to obstruct any rolling stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

Notes—Person stopping train several times pulling communication cord and subsequently obstructing train by sitting in front of engine is guilty under s 128 A I R 1931 Oudh 85—32 Cr L J 547

129. If a person rashly or negligently does any act, or omits to do

Endangering safety of persons travelling by railway by rash or negligent act or omission

what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished

imprisonment for a term which may extend to one year, or with or with both

130 (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections he shall be deemed, notwithstanding anything in section 82 or section 83 of the

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs to prevent the minor from being again guilty of any of those acts or omissions

(2) The amount of the bond, if forfeited shall be recoverable by the Court as if it were a fine imposed by itself

(3) If a father or guardian fails to execute a bond under sub section (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees

Notes—*Vide* 30 S L R 9=165 Ind Cas 642=A I R 1936 Sind 185

Procedure

131 (1) If a person commits any offence mentioned in section 100, 101, 119, 120, 121, 126, 127, 128 or 129

Arrest for offences against certain sections

or in section 130 sub section (1), he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial

Notes—*Vide* U B R (1897 1901) Vol I 54

132 (1) If a person commits any offence under this Act, other

than an offence mentioned in the last foregoing section, or fails or refuses to pay any excess charge or other sum demanded

under section 113 and there is reason to believe that he will abscond or his name and address are unknown, and he refuses on demand to give his name and address or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him

(2) The person arrested shall be released on his giving bail or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required

(3) If the person cannot give bail and his true name and address are not ascertained he shall, with the least possible delay be taken before the nearest Magistrate having jurisdiction

(4) The provisions of Chapters XXXIX and XLII of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given, and bonds executed, under this section

133 No Magistrate other [than a Presidency Magistrate or]*
 Magistrates having jurisdiction than a Magistrate whose powers are not
 under Act less than those of a Magistrate of the
 second class shall try any offence under this
 Act

Sind 185

134 (1) Any person committing any offence against this Act or
 any rule thereunder shall be triable for
 Place of trial such offence in any place in which he may
 be or which the [Provincial Government]† may notify in this behalf,
 as well as in any other place in which he might be tried under any
 law for the time being in force

(2) Every notification under sub section (1) shall be published in
 the [official Gazette],‡ and a copy thereof shall be exhibited for the
 information of the public in some conspicuous place at each of such
 railway stations as the [Provincial Government]† may direct

CHAPTER X

SUPPLEMENTAL PROVISIONS

135 Notwithstanding anything to the contrary in any enactment,
 Taxation of railways by local or in any agreement or award based on any
 authorities enactment, the following rules shall
 regulate the levy of taxes in respect of
 railways and from railway administrations in aid of the funds of local
 authorities namely —

(1) A railway administration shall not be liable to pay any tax in
 aid of the funds of any local authority unless the [general controll-
 ing authority]† has by notification in the official Gazette, declared
 the railway administration to be liable to pay the tax

(2) While a notification of the [general controlling authority]† under
 clause (1) of this section is in force, the railway administration shall be

all the circumstances of the case, from time to time determine to be
 fair and reasonable.

(3) The [general controlling authority]† may at any time revoke
 or vary a notification under clause (1) of this section

(4) Nothing in this section is to be construed as debarring any
 railway administration from entering into a contract with any local

authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control

(5) "Local authority" in this section means a local authority as defined in the [General Clauses Act, 1887,]* and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river

136 (1) None of the rolling-stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court "or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution"† without the previous sanction of the [safety controlling authority]‡

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order

137 (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code

Railway servants to be public servants for the purposes of Chapter IX of the Indian Penal Code

(2) In the definition of "legal remuneration" in section 161 of that Code, the word 'Government' shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,

(b) in contravention of any direction of the railway administration in this behalf, engage in trade

(4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1)

138 If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf any station, dwelling-house, office or other building

Procedure for summary delivery to railway administration of property detained by railway servant

office, or dies, absconds or absents himself and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf any station, dwelling-house, office or other building

* In Burma for the words within brackets read 'Burma General Clauses Act 1934 G B Order of 1937'

† The words quoted have been inserted by Act IX of 1890, s 7
‡ In British India the words within brackets have been substituted by G B Order of 1937 In Burma for these words read the word 'Board' vide G B Order of 1937

with its appurtenances or any books papers or other matters belonging to the railway administrations and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration order any police officer, with proper assistance to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books papers or other matters and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf

Notes—A summary procedure is laid down in this section for recovery by the railway of properties improperly held by the employees who are dismissed or discharged 15 Cr L J 25=23 Ind Cas 17

139 [Omitted by G I Order 1937 and G B Order of 1937]

140 Any notice or other document required or authorised by this Act to be served on a railway administration may be served in the case of a railway administered by the [Government]* [or a Native State]* on the [Manager]* and, in the case of a railway administered by a railway company, on the Agent in [India]* of the railway company—

(a) by delivering the notice or other document to the [Manager]* or Agent or

(b) by leaving it at his office or

(c) by forwarding it by post in a prepaid letter addressed to the [Manager]* or Agent at his office, and registered under Part III of the Indian Post Office Act, 1866

May—The word may in this section means must and a notice of a claim under

see also 17 C W N 1134

141 Any notice or other document required or authorised by this Act to be served on any person by a railway administration may be served—

(a) by delivering it to the person or

(b) by leaving it at the usual or last known place of abode of the person, or

(c) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode and registered under Part III of the Indian Post Office Act 1866

Notes—Postal service is considered sufficient

142 Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of

Pre-empt on where notice is served by post

* In Burma omit or a Native State for Manager substitute Chief Commissioner for Government substitute Board and for India Burma vide G B Order of 1937

and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered

143 (1) A rule under section 22, section 34 or section 84, or the Provisions with respect to rules cancellation, rescission or variation of a rule under any of those sections, or under section 47, sub-section (4), shall not take effect until it has been published in the [official Gazette] *

(2) Where any rule made under this Act, or the cancellation, rescission or variation of any such rule, is required by this Act to be published in the [official Gazette],* it shall, besides being so published, be further notified to persons affected thereby in such manner as the [authority making, cancelling, rescinding or varying the rule]† by general or special order, directs †

144 [*Repealed by G I Order of 1937 and G B Order of 1937*]

145 (1) The manager of a railway administered by the Government of a Native State and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorise any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal or other Court

(2) A person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the Code of Criminal Procedure, 1882, be entitled to conduct such prosecutions without the permission of the Magistrate

[146 (1) This Act or any portion thereof may be extended by notification in the official Gazette —

(a) to any tramway which is a Federal Railway within the meaning of the Government of India Act, 1935 by the Federal Railway Authority and

(b) to any other tramway, by the Provincial Government

(2) This section does not apply to any tramway not worked by steam or other mechanical power]§

[147 The general controlling authority may, with the sanction of the safety controlling authority, by notification in the official Gazette, exempt any railway from any provisions of this Act

Power to exempt railway from Act

1937

1937

† In British India the following sub section which is in force in Burma has been omitted by G I Order of 1937 —

(3) The Board may cancel or vary any rule made by it under this Act § Substituted in British India by G I Order of 1937 In Burma read the following as section 146 —

146 (1) This Act or any portion thereof may be extended by notification in the Gazette—

(a) to tramway not wholly within a municipal area, by the Board, and

(b) to any other tramway, by the Governor

(2) This section does not apply to any tramway not worked by steam or other mechanical power

by G I Order of 1937
by G I Order of 1937

Provided that the safety controlling authority shall not refuse its sanction unless it appears to it necessary so to do for the purpose of securing safety]*

148 (1) For the purposes of section 3, clauses (5), (6) and (7), and sections 4 to 19 (both inclusive), definitions of "railway" and "railway servants" (both inclusive), 59, 79, 83 to 92, 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, [144],† 145 and 147, the word "railway" whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the public carriage of passengers animals or goods as well as to a railway falling within the definition of that word in section 3, clause (4)

(2) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125 and 137, sub-sections (1), (2) and (4) and section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration

149. [Omitted by Act I of 1938]‡

THE FIRST SCHEDULE

ENACTMENTS REPEALED

[Repealed by Act I of 1938]

THE SECOND SCHEDULE

ARTICLES TO BE DECLARED AND INSURED

(See Section 75)

(a) Gold and silver, coined or uncoined manufactured or unmanufactured

(b) plated articles

(c) cloths and tissue and lace of which gold or silver forms part, not being the on enrolled British or

(g) Government stamps

(h) bills of exchange hundies promissory notes bank notes and orders or other securities for payment of money

(i) maps writing and title deeds

(j) paintings, engravings lithographs photographs carvings sculpture and other

ther wrought up or

(m) shawls

(n) lace and furs

(o) opium,

(p) ivory, ebony coral and sandalwood

* Substituted in British India by G I Order of 1937 In Burma read the following for section 147 —

— "147. The Board may, by a like notification exempt any railway from any of the

- (g) musk, sandalwood oil, and other essential oils used in the preparation of *str* or other perfume,
 (r) musical and scientific instruments,
 (s) any article of special value which the [Federal Railway Authority]* may, by notification in the Gazette of India add to this schedule

THE REFORMATORY SCHOOLS ACT, 1897. CONTENTS

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THE REFORMATORY SCHOOLS ACT, 1897† (ACT NO VIII OF 1897.)

(Received the assent of the Governor-General on the 11th March, 1897)

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders, It is hereby enacted as follows —

* In British India the words within brackets have been substituted by G 1 Order of 1907 In Burma for these words read the word 'Board' vide G B Order of 1937

† This Act has been declared in force in the Santhal Parganas by Reg 3 of 1897 s 8 as amended by Reg 3 of 1899 s 3 in British Baluchistan by Reg 2 of 1918 s 3 in the Angul District by Reg 3 of 1913, s 3, in the Arakan Hill District by Reg 1 of 1916, s 2

Notes—After the repeal of Act V of 1876 by this Act persons who were empowered to act under the Act of 1876 were held unless they had been especially empowered by the Local Government under s 8 (2) to be not competent to act under this Act. Rat Un Cr C 936

Youthful offenders—A youthful offender convicted under s 302 I P C is eligible for despatch to the Reformatory School 9 A L J 99 Persons of such description should be fined 15 Bom L R 306 The sending of first youthful offenders whose antecedents are not shown to be bad to ordinary jails has the effect of making them hardened criminals after they are discharged from such jails The association with all classes of offenders has a very unhealthy influence on them It is the duty of the Magistrate to take into consideration all such matters when deciding the question of sentence There are other suitable forms of punishment provided by the law The provisions of Reformatory Schools Act are intended for cases of youthful offenders 96 Ind Cas 300=27 Cr L J 931=1 I R 1926 Lah 611

I—Preliminary

Title and extent 1 (1) This Act may be called the Reformatory Schools Act, 1897 *

(2) *

(3) This section and section 2 shall extend to the whole of British India The other sections shall extend in the first instance to the whole of British India except the territories [administered on the 11th day of March 1897]† by the [Provincial Government]† of the Punjab and the Chief Commissioner of Coorg, but [the Provincial Government of any of the said territories]† may at any time by notification in the [official Gazette]† extend these sections to their territories from such day as may be fixed in any such notification

2 [Repealed by Act I of 1938.]

3 [Repealed by Act I of 1938]

Definitions

4 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'youthful offender' means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years

(b) 'Inspector-General' includes any officer appointed by the [Provincial Government]† to perform all or any of the duties imposed by this Act on the Inspector General and

(c) 'District Magistrate' shall include a Chief Presidency Magistrate

Youthful offender—In order that a Magistrate should have jurisdiction under this Act it is necessary that the offender should be convicted on 1 Weir 89 Rat Un Cr C 905 tent to find from the appearance of person that he desirable that when it is procurable there should and especially when it may be necessary to determine the period of detention which is limited to his attaining 18 years of age 27 C 133 Under this section a boy ceases to be technically a youthful offender at the age of 15 75 Ind Cas 291

II—Reformatory Schools

Power to establish and discontinue Reformatory Schools

5† The [Provincial Government]† may—

* The word and after this repealed by Act 10 of 1914 has been omitted

† Substituted in British India by G I Order of 1937

‡ Certain words before this repealed by Act 4 of 1914 have been omitted

(a) establish and maintain Reformatory Schools at such places as it may think fit,

(b) use as Reformatory Schools, schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the [Provincial Government]* may prescribe in this behalf,

(c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such

Requisites of schools

6 Every school so established or used must provide—

(a) sufficient means of separating the inmates at night,

(b) proper sanitary arrangements, water supply, food, clothing and bedding for the youthful offenders detained therein,

(c) the means of giving such youthful offenders industrial training,

(d) an infirmary or proper place for the reception of such youthful offenders when sick

7 (1) Every school intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector

Inspection of Reformatory Schools

General and if he finds that the requirements of section 6 have been complied with, and that, in his opinion such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect and such certificate shall be published in the [official Gazette],* together with an order of the [Provincial Government]* establishing the school as a Reformatory School or directing that it shall be used as such and the school shall thereupon be deemed to be a Reformatory School

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the [Provincial Government]* a report on the condition of the school in such form as the [Provincial Government]* may prescribe

8 (1) Whenever any youthful offender is sentenced to transportation or imprisonment and is in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may subject to any rules made by the [Provincial Government]* direct that, instead of undergoing his sentence, he shall be sent to such a school, and be there detained for a period which shall be not less than three or more than seven years

(2) The powers so conferred on the Court by this section shall be exercised only by (a) the High Court (b) a Court of Session (c) a District Magistrate, and (d) any Magistrate specially empowered by the [Provincial Government]* in this behalf, and may be exercised by such Courts whether the case comes before them originally or on appeal

(3) The [Provincial Government]* may make rules for—
(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations

* Substituted in British India by G. I. Order of 1937.

Procedure—A Magistrate should first pass a sentence of imprisonment and then direct that instead of undergoing the sentence the offender should be sent to a Reformatory School for such a period as the Act and Rules framed thereunder direct. 1 Weir 879 L B R (1893 1900) 618 149 Ind Cas 1128-36 P L P 79 A I R 1384 Pesh 29 An accused who is merely fined cannot be sent to a Reformatory 10 Ind Cas 773 L B R (1893 1900) 491 5 C W N 210 1 Bom L R 162 34 P R 1910 Cr L B R (1893 1900) 493 If a youthful offender is sentenced to a Reformatory School for such period 3 L B R 46 see also Rat Un Cr C 917 2 C C 915 2 L B R 216 Exact period of detention powers of High Court to pass sentence under this section in revision vide 30 Bom L R 952

9 (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that

Procedure where Magistrate is not empowered to pass an order under section 8

a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit, and pass such sentence and order for the detention in a Reformatory School of the youthful offender or otherwise as he might have passed if such youthful offender had been originally tried by him

Notes—A second class Magistrate not empowered to act under s 8 should after convicting the accused submit the case to the District Magistrate for passing sentence under s 9 (2) 16 Cr L J 32 Under this section the District Magistrate alone has powers to pass orders 2 L B R 121

10 The officer in charge of a prison in which a youthful offender

Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools

is confined, execution of a sentence of imprisonment, may bring him if he has not then attained the age of fifteen years before the District Magistrate within whose jurisdiction such prison is situate, and such Magistrate may if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8 with reference to the period of detention thereby authorised

Notes—This section is inapplicable to the case of an accused person who is not a youthful offender and even if the accused is a youthful offender a District Magistrate cannot without an appeal alter the nature of the sentence 15 C P L R 15 An order of detention passed under this section is not a sentence within s 426 of Cr Pro Code 16 Cr L J 100

11 (1) Before directing any youthful offender to be sent to a

Preliminary inquiry and finding as to age of youthful offender

Reformatory School under section 8, section 9 or section 10 the Court or

of his age necessary, shall may be

(2) A similar inquiry shall be made and finding recorded by Magistrate not empowered to pass an order under section 8,

submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1)

Scope—A youthful offender under this Act is one who is under the age of 15 years. By cl (1) the court before directing any youthful offender to be sent to a Reformatory School must enquire into his age and record a finding and by clause (2) a similar enquiry and finding must be made and recorded before the offender is sent by the trying Magistrate to the District Magistrate for orders of detention of youthful offenders the Act lays offender must be under 15 years (2) the period years (3) it must not exceed 7 years So the age 24 M 13—1 Weir 182 see also 4 C W N 5 This section requires an inquiry as to age should be held before sending a youthful offender to a Reformatory School There must be a clear finding as to age and that he is fit and proper person to be an inmate of such a school 3 Rang 218—A I R 1925 Rang 302

12 Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the [Provincial Government]* may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the [Provincial Government]*

(a) School, or
(b) expires,
which the term of his original sentence must expire he shall thereupon be released, but should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School

13 (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the [Provincial Government]*

(2) No person shall be detained in a Reformatory School after he has been found by the [Provincial Government]* to have attained the age of eighteen years

14 The [Provincial Government]* may at any time order any youthful offender—

(a) to be discharged from a Reformatory School,
(b) to be removed from one Reformatory School to another such school situate within the territories subject to such Government
Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal

[15 The Provincial Governments of any two Provinces may after mutual agreement, generally or specially, notify in their respective official

* Substituted by G I Order of 1937

Gazettes that any Reformatory School situated in one of the Provinces shall be available for the reception of youthful offenders directed to be sent to a Reformatory School by any Court or Magistrate in the other Province and may thereupon make provision for the removal of youthful offenders accordingly]*

16 Nothing contained in the Code of Criminal Procedure 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment

Scope—This section does not authorise the appellate Court or the Court of revision to interfere with the finding of the Magistrate as to the age of a youthful offender or to alter or modify an order of detention in substitution of imprisonment or transportation

he legality or the propriety section 5 C W N 210

1 L B R 63 21 A 321

ppael or revision when an Government 1 L B R

of imprisonment to that tion has been passed on a

person who has not been convicted of any offence the High Court is not precluded from dealing with the order 20 A 160 Imprisonment means a legal sentence of imprisonment 1 L B R 42 The appellate Court can consider the propriety or legality of sentence 28 C 423 A I R 1931 Nag 179

III—*Management of Reformatory Schools*

17 (1) For the control and management of every Reformatory School, the [Provincial Government]* shall appoint either (a) a Superintendent and Committee of Visitors or Board of Management and a Committee of Visitors or (b) a Board of Management

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India

(3) The [Provincial Government]* may suspend or remove any Superintendent or any Member of a Committee or Board so appointed

18 (1) Every Superintendent so appointed may, with the sanction of the Committee, by licence under his hand permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years to live under the charge of any trustworthy and respectable person named in the licence or any officer of Government or of a Municipality being an employer of labour and willing to receive and take charge of him on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling

(2) The licence shall be in force for three months and no longer but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time

* Substituted by G I Order of 1937

19 The licence shall be cancelled at the desire of the employer named in the licence

Cancellation of licence

20 If during the term of the licence the employer named therein dies or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the licence shall thereupon cease and determine

Determination of licence

21 If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the licence.

Cancellation of licence in case of ill treatment

22 (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school within the meaning of Act No XIX of 1850 (*concerning the binding of apprentices*)

Superintendent to be deemed guardian of youthful offenders

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his licence, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticeship the right to detain such youthful offender in a Reformatory School shall cease, and the unexpired term (if any) of his sentence shall be cancelled

Power to apprentice youthful offender

23 (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall at least once in every month,—

Duties of Committee of Visitors

(a) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects,

(b) examine the punishment-book,

(c) bring any special cases to the notice of the Inspector-General, and

(d) see that no person is illegally detained in the school

(2) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee

24 If, in exercise of the power conferred by section 17, the [Provincial Government]* appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive, and the licence mentioned in section 18 may be under the hand of their chairman, and they shall be deemed to be the guardians of the youthful offenders detained in such school

Powers of Board of Management

* Substituted by G I Order of 1937.

25 The [Provincial Government]* may declare any body of Trustees or Managers of a school who are willing to act in conformity with the rules referred to in section 5, clause (b) to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management

26 (1) With the previous sanction of the [Provincial Government]* every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

(i) to prescribe the articles which are to be deemed to be "prohibited articles" ,

(ii) to regulate—

(a) the conduct of business of the Board ,

(b) the management of the school ,

(c) the education and industrial training of youthful offenders ,

(d) visits to, and communication with, youthful offenders ,

(e) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school

(f) the manner in which such articles are to be removed when introduced without due authority ,

(g) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein ,

(h) the conditions on which the possession by any such youthful offender of such articles may be sanctioned

(i) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority ,

(j) the punishment of offences committed by youthful offenders, and

(k) the granting of licences for the employment of youthful offenders

(2) In the absence of a Board of Management the [Provincial Government]* may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business

IV.—Offences in relation to Reformatory Schools

27 Whoever, contrary to any rule made under section 26, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein any prohibited article, and every officer or person in charge of a Reformatory School who, contrary to any such rule knowingly suffers any such article to be introduced into or removed from any Reformatory School,

* Substituted by G I Order of 1937

possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,
 and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,
 and whoever abets any offence made punishable under this section shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both

28 Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both

29 A police-officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

V—Miscellaneous

30 [Repealed by Act 3 of 1900]

31 (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be—

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian, or nearest adult relative, or such parent, guardian or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months

(2) For the purposes of this section the term "youthful offender" shall include a girl

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him

Notes—1 L. B. R. 279

This section is applicable to the case of a minor girl found guilty 24 O. C. 305

This section enables any Court in the case of youthful offender under section 15 to deliver him to his parents with or without sureties for his good behaviour 14 A L J 1158-36 Ind Cas 492

32 When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the Code of Criminal Procedure, 1882, but the Court shall forthwith report the matter to the [Provincial Government]* which shall have power to deal with the matter in any way in which it thinks fit

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced

THE INDIAN REGISTRATION ACT (XVI OF 1908)

CONTENTS.

SECTION	PART XIV OF PENALTIES.	SECTION	
81	Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure	83	delivering false copies or translations false personation and abetment
82	Penalty for making false statements,	81	Registering officer may commence prosecutions
			Registering officers to be deemed public servants

THE INDIAN REGISTRATION ACT (EXTRACTS)

(ACT XVI OF 1908)

PART XIV OF PENALTIES

81 Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating or registering of any documents presented or deposited under, its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine or with both

Penalty for incorrectly endorsing copying translating or registering documents with intent to injure

82 Whoever—

(a) intentionally makes any false statement, whether on oath or not and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act, or

(b) intentionally delivers to a registering officer, in any proceeding under section 19, or section 21, a false copy or translation of a document, or a false copy of a map or plan, or

* Substituted by G I Order of 1937.

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act or

(d) abets anything made punishable by this Act,

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

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7 To constitute
person Merely
under the section

159 Ind Cas 155=1935 M W N 1162-A I R 1935 Mad 918 Where the conviction of false impersonation was based solely on the comparison of the thumb impression on the questioned document with that of the thumb impression of the accused taken in court Held the conviction is bad 3 Pat L T 526 In a case where the accused is charged with false personation the Court in Court for purpose of comparison 28 The proceedings or inquiry referred to in the prescribed by the Act 5 Pat L T 372= sanction of a Sub Registrar or any officer is not a preliminary requisite for the institution of an offence under s 82 87 Ind Cas 913-2

83 (1) A prosecution for any offence under this Act coming to

Registering officer may commence prosecutions

the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-

General * the Registrar, or the Sub-Registrar, in whose [territories]† district, or sub-district, as the case may be, the offence has been committed

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class

Notes —Section 83 is no bar to a prosecution at the instance of a private person 61 Ind Cas 1000 he knowledge of a registering officer J 145 Permission of the necessary before an accused can sanction is illegal and not 67 Ind Cas 195=A I R 1934 All 963 (F B) This section applies to offences committed under the Act of the registering officer 159 Ind Cas 41 which vided 91

84 (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the India Penal Code †

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so

(3) In section 228 of the Indian Penal Code † the words judicial proceeding shall be deemed to include any proceeding under this Act

* Certain words after this have been omitted by G I Order of 1937 and G B Order of 1937

† In Burma the word within brackets have been omitted by G B Order of 1937
‡ A.L.A. of 1860

THE INDIAN RESERVE FORCES ACT (IV OF 1888)

CONTENTS.

PREAMBLE

SECTION

- 1 Title and commencement
- 2 Division of Reserve Forces into Active and Garrison Reserves
3. Locality of service of Reserves

SECTION

- 4 Power to make rules for regulation of Reserve Forces
- 5 Liability of Reserve Forces to military law
- 6 Punishment of certain offences by persons belonging to Reserve Forces

[THE INDIAN RESERVE FORCES ACT, 1888.]* (ACT NO IV OF 1888)†

(Received the Governor-General's assent on the 2nd March, 1888)

An Act to regulate Her Majesty's Indian Reserve Forces

[WHEREAS it is expedient to provide for the Government, discipline and regulation of Her Majesty's Indian Reserve Forces, It is hereby enacted as follows —]*

Title and Commencement

[1 (1) This Act may be called the Indian Reserve Forces Act, 1888, and (2) It shall come into force on such day as the "Central Government"† may, by notification in the "official Gazette" ‡ appoint in this behalf]§

Division of Reserve Forces into Active and Garrison Reserves

||"2 The Indian Reserve Forces shall consist of the Regular Reserve and supplementary Reserve'

3 A person belonging to the 'Indian Reserve Forces"|| shall be liable to serve beyond the limits of [British India]¶ as well as within those limits **

4 The [Central Government]†† may make rules and orders for the Government, discipline and regulation of the Indian Reserve Forces

Power to make rules for regulation of Reserve Forces

5 Subject to †† such rules and orders as may be made under section 4, a person belonging to the [Indian Reserve Forces]* shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to [Her Majesty's Indian Forces]‡

Liability of Reserve Forces to military law

Punishment of certain offences by person belonging to Reserve Forces

6 (1) If a person belonging to the [Indian Reserve Forces]‡—

* In Burma the words within brackets have been omitted by G. O. Order of 1937

† Act IV of 1888 came into force on May 26 1888 —See Gazette of India of same date Pt I, p. 239

(a) when required by, or in pursuance of, any rule or order under this Act to attend at any place, fails, without reasonable excuse to attend in accordance with such requirement, or,

(b) fails without reasonable excuse to comply with any such rule or order, or

(c) fraudulently obtains any pay or other sum contrary to any such rule or order,

he shall be liable—

(i) on conviction by a Court-martial to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the [Indian Army Act 1911]* empowered to award or

(ii) on conviction by "a Presidency Magistrate or † a Magistrate of the first class to imprisonment for a term which may extend in the case of a first offence under this section, to six months, and in the case of any subsequent offence thereunder, to one year

(2) Where a person belonging to the [Indian Reserve Forces]† is required by, or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf and stating that the person so required to attend failed to do so in accordance with such requirement shall without proof of the signature or appointment of such officer, be evidence of the matters stated therein

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other or be transferred from one description of custody to the other

7 [Effect of Act on persons already in the Reserve—Repealed by Act 12 of 1931]

THE INDIAN RIFLES ACT. 1920

CONTENTS

SECTION

1 Short title

2 Police officer subject to discipline

and penalties prescribed in local Acts wherever serving

THE INDIAN RIFLES ACT, 1920. (ACT NO XXIII 1920)

PASSED BY THE GOVERNOR GENERAL IN COUNCIL

(Received the Governor General's assent on the 31st day of August 1920)

An Act to provide for the better discipline of Police-officers enrolled in Military Police or Rifle Battalions

WHEREAS it is expedient to provide for the better discipline of police officers enrolled under local Acts in Military Police or Rifle Battalions It is hereby enacted as follows —

Short title

1 This Act may be called the Indian Rifles Act 1920

* In Burma for British India read British Burma for Indian Reserve read His Majesty's Burma Forces vide G. O. Order of 1937 t 12 of 1931 In Burma om t

der of 1937

Police-officers subject to discipline and penalties prescribed in local Acts wherever serving

2. All Police-officers enrolled under the provisions of any local Military Police or Rifles Act shall be subject to the discipline and penalties prescribed by such Act whenever serving in [India]*

THE INDIAN RUBBER CONTROL ACT. 1934

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- 42 Penalty for illicit cultivation
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- 44 Trial of offences under sections 33 39 40 41 and 42

[THE INDIAN RUBBER CONTROL ACT]†

(ACT NO. XXVIII OF 1934)

(Received the assent of the Governor General on the 31st August 1934)

[An Act to provide for the control of the export from and import into India of rubber and for the control of the extension of the cultivation of rubber in British India]*

[WHEREAS it is expedient to provide for the control of the export from and import into India of rubber and for the control of the extension of the cultivation of rubber in British India, It is hereby enacted as follows —]*

Notes — In view of the catastrophic fall in the price of rubber in recent years and consequent difficulties with which rubber producers have been faced representatives of the

* In Burma for India read Burma title G B Order of 1937

† In Burma the words within brackets have been omitted by G B Order of 1937

industry in the main rubber producing countries namely, India, Ceylon, Malaya, British

position by the Governments concerned

(ii) that during the currency of the scheme, the exports of rubber should be restricted

exclusively
of one per
cent and

Statement of Objects and Reasons

PRELIMINARY

Short title extent, commencement and duration

1 (1) This Act may be called the Indian Rubber Control Act, 1934

[(2) It extends to the whole of British India]*

(3) It shall come into force on such date as the [Central Government]† may, by notification in the [official Gazette],‡ appoint

(4) It shall remain in force only up to the 31st day of December, 1938, but the [Central Government]† may, by notification in the [official Gazette],‡ direct that it shall remain in force for such further period as may be specified in any such notification

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

["(a) 'Committee' means the Indian Rubber Licensing Committee constituted under this Act' §]

(b) "to export" means to take out of British India by sea or by land to a French or Portuguese Settlement bounded by India or any place "outside India and Burma" §||

(c) 'factory' means any premises for the manufacture of articles containing rubber from rubber produced in India,

(d) "net exports of rubber" means the difference between the total exports of rubber [excluding rubber contained in imported manufactured articles re-exported]¶ and the total imports of rubber [excluding rubber contained in imported manufactured articles whether or not re-exported.]‡

(e) "owner" includes any agent of an owner,

* In Burma sub section (2) has been omitted by G. B. Order of 1937

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor" vide G. B. Order of 1937

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Gazette" vide G. B. Order of 1937

§ The words within quotations have been substituted in British India by G. I. Order of 1937

|| In Burma for clauses (a) and (b) of sub section 2 read the following —
"(a) 'Committee' means the Burma Rubber Licensing Committee constituted under this Act

"(b) to export means to take out of British Burma by sea or by land to any place outside Burma and India" vide G. B. Order of 1937

¶ The words within brackets have been substituted by Act LV of 1936.

(f) "prescribed" means prescribed by rules made under this Act,

(g) "to plant" means to propagate a rubber plant from seed or any living portion of the rubber plant that may be used to propagate it, and "to re-plant" means to plant in any area carrying rubber plants on the 1st day of June, 1934, more than thirty rubber plants in any one acre,

(h) "rubber" means—

(i) rubber prepared from the leaves, bark or latex of any rubber plant,

(ii) the latex of any rubber plant, whether fluid or coagulated, in any stage of the treatment to which it is subjected during the process of conversion into rubber, and

(iii) latex in any state of concentration, and includes [rubber contained in any manufactured article,]*

(i) "rubber plant" includes plants, trees, shrubs or vines of any of the following —

(i) *Hevea Brasiliensis* (Para Rubber),

(ii) *Manihot Glaziovii* (Ceora Rubber)

(iii) *Castilloa elastica*,

(iv) *Ficus elastica* (Rambong), and

(v) any other plant which the [Committee]† may, by notification in the [official Gazette]‡ declare to be a rubber plant for the purposes of this Act, and

(j) "Rubber Licensing [Resolution]"§ means the [Resolution]§ of the Government of India published under Finance Department (Central Revenues) notifications [No 39]§ dated the 26th May, 1934

CHAPTER I

THE RUBBER LICENSING COMMITTEES

[3 (1) The Central Government shall constitute a Committee to be called the Indian Rubber Licensing Committee.]||

Constitution
Committees

[(2) The Indian Rubber Licensing Committee shall consist of five members, namely —

(a) two members to be nominated by the Government of Travancore,

"(b) one member to be nominated by the Central Government to represent the Province of Madras ¶

(c) one member to be nominated by the Cochin Durbar, and

†

1937

1937

1937

§

and G. B. Order of 1937

¶ In British India sub section (1) has been substituted by G. I. Order of 1937 In

or Licensing Committee —¶

Provided that sub-committees or executive officers appointed by the Licensing Committees constituted under the Rubber Licensing Resolution shall be deemed to have been duly appointed under this Act

- 6 (1) The Committee may make bye-laws consistent with this Act and with the rules made thereunder for all
Power to make bye laws or any of the following matters, namely —
 (a) the regulation of the procedure to be followed at meetings of the Committee,
 (b) the appointment of sub committees,
 (c) the delegation to sub committees, members or officers of the Committee of any of the powers of the Committee under this Act,
 (d) the determination of the travelling allowances of members or officers of the Committee and of members of a sub-committee
 (e) the appointment, promotion and dismissal of officers and servants of the Committee and the creation and abolition of appointments of such officers and servants,
 (f) the regulation of the grant of pay and leave to such officers and servants, and
 (g) any other matter in respect of which bye law may be made under this Act or the rules made thereunder

(2) All bye-laws made under this section shall be subject to the previous sanction of the [Central Government]*

7 (1) Save in respect of proceedings and orders under section 29, all acts of the Committee shall be subject
Powers of control by the Central Government to the control of the [Central Government]* which may cancel suspend or modify as Central Government thinks fit any such Act

(2) The records of the committee shall be open to inspection at all reasonable times by any officer authorised in this behalf by the [Central Government]*

8 (1) [The Committee]† shall keep accounts of all fees received
Keeping and auditing of accounts by it under this Act, and of the manner in which they are expended

(2) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the [Central Government],* and such auditors shall have power to disallow any item which has been in their opinion expended otherwise than in pursuance of the purposes of this Act

9 (1) The [Central Government]* may, by notification in the
Dissolution of committees [official Gazette]‡ declare [the Committee]† to be dissolved and on the date of the publication of such notification the Committee§ shall stand dissolved, and§ this Act shall be deemed to be repealed

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† Substituted by G I Order of 1937 and G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

§ Certain words after this repealed by G I Order of 1937 and G B Order have been omitted

(2) When [the Committee]* is dissolved, either under this section or by the expiry of this Act, the unexpended balance of fees received by the Committee under this Act shall lapse to [the Central Government] †

Power to make rules

10 The [Central Government]‡ may, by notification in the [official Gazette]§ make rules—

(a) providing for the establishment and maintenance of offices by the Committee,

(b) providing for the conduct of business by the Committee and determining the number of members which shall form a quorum at meetings,

(c) providing for the maintenance by the Committee of a record of all business transacted and submission of copies thereof to Government,

(d) regulating the preparation of annual estimates of receipts and expenditure,

(e) regulating the keeping of accounts of receipts and expenditure,

(f) determining the custody in which the current account of the Committee shall be kept, and the bank or banks at which surplus moneys at the credit of the Committee may be deposited at interest, and

(g) generally to carry out the provisions of this Chapter.

CHAPTER II

CONTROL OVER THE EXPORT OF RUBBER

11 Nothing in this Act shall apply to the export of rubber which has been placed before mid-night on the 31st day of May, 1934, under customs in a godown or warehouse approved by a Customs Collector or to the export of rubber by parcel post

12 (1) No rubber, [grown, produced or contained in an article manufactured in]* [India or Burma]§ shall be exported unless covered by a licence and a certificate of origin issued by or on behalf of the [Indian Rubber Licensing Committee]¶**

(2) No rubber [grown, produced or contained in an article manufactured in]* a country other [than India or Burma]‡ shall be re-exported unless covered by a certificate of origin issued by an official empowered in that behalf by the Government of such country and endorsed by or on behalf of the [Indian Rubber Licensing Committee]¶**

† In Burma for 'In
Rubber Licensing Commit
** Certain words after
words 'Burma'
added

[13 A general export allotment, that is, the permissible maximum net exports of rubber from British India* for any specified period expressed in the terms of dry rubber, shall be declared from time to time by the "Central Government"† by notification in the 'official Gazette' ‡]

14 (1) The export quota of each rubber estate or factory for any period that is the total quantity of rubber which may be exported by or on behalf of the owner of the estate or factory during that period, shall be determined by the Committee in the prescribed manner

(2) The total of all export quotas for any period as so determined [by the Indian Rubber Licensing Committee]§ shall not be more than an amount which, when the difference between imports of rubber and re exports of imported rubber in the same period has been deducted therefrom exceeds [the general export allotment]|| [as the case may]¶ be, for the same period by more than five per cent

15 (1) [If in any year the net exports of rubber from British India** exceed the general export allotment for that year]‡‡ the export allotment for the succeeding year shall be deemed to be reduced to an amount equal to such excess

(2) [If in any year the net exports of rubber from British India are less than the general export allotment for that year,]‡‡ a quantity of rubber equal to the amount of such deficiency but not in any case exceeding twelve per cent of the export allotment for the year in which the deficiency occurred may be exported in the succeeding year and shall not be deemed to form part of the export allotment for the year in which it is exported

(3) The right to export rubber to which sub section (2) refers shall be allocated among estates and factories by the Committee in the prescribed manner

* Certain words after this repealed by G I Order of 1937 have been omitted

† Substituted by G I Order of 1937

‡ Substituted by Act XV of 1936 In Burma for this section read the following section

13 — 13 The Burma export allotment that is the permissible maximum net export of rubber from British Burma for any specified period expressed in terms of dry rubber shall be declared from time to time by the Governor by notification

§ In British India certain words after this repealed by G I Order of 1937 have been omitted In Burma for the words within brackets read by the Burma Rubber Licensing Committee vide G B Order of 1937

|| In British India certain words after this repealed by G I Order of 1937 have been omitted In Burma for these words within brackets read the Burma export allotment vide G B Order of 1937

¶ In Burma the words within brackets have been omitted by G B Order of 1937

** After this certain words have been omitted by G I Order of 1937

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(4) As soon as may be after the end of each year, the [Central Government]* shall notify in the [Official Gazette]†‡ the amount of any deficiency to which the provisions of sub section (2) apply

16 (1) The owner of a rubber estate or factory to which a quota has been allotted by the Committee for any period shall have a right to obtain from that Committee at any time during that period export licences and certificates of origin to cover the export of rubber up to the amount of the unexhausted balance of the quota, that is, up to the amount of the quota less the amount for which export licences have already been issued against it

Provided that the unexhausted balance of any quota at any time during the year 1934 after the commencement of this Act shall be the amount of the quota less —

(a) the amount for which export licences have already been issued against the quota under this Act, and

(b) the amount for which export licences were issued against the quota by a Licensing Committee constituted under the Rubber Licensing Regulations

(2) The right of the owner of a rubber estate or factory under this section may be transferred in whole or in part and subject to proof of the transfer to the satisfaction of the Committee [which determined the quota]§ the transferee shall have a right to obtain certificates of origin and export licences up to the amount covered by the transfer or up to the amount of the unexhausted balance of the quota, whichever may be less

17. (1) The owner of any rubber estate or factory to which a quota has been allotted by the Committee, or any transferee of his right, may, at any time before the expiry of the period to which the quota relates, apply in writing to the Committee for an export licence and a certificate of origin covering a stated quantity of rubber

(2) If the unexhausted balance of the quota is sufficient to cover the stated quantity, the Committee shall, subject to the payment of the requisite fee, issue an export licence and certificate of origin covering the stated quantity

(3) Every licence and certificate of origin shall be in the prescribed form and shall bear the date of its issue, and every licence shall be valid for such period as may be specified therein or until shipment of the consignment covered by the licence provided that such consignment was placed under customs control with a view to shipment before the expiry of the period specified on the licence and has remained thereafter under customs control

1937 Order of
1937 Order
1937 1937.
have been omitted

§ In Burma the words within brackets have been omitted by G. B. Order of 1937

18 (1) Any person desiring to export [from British India]*
 Re export of imported rubber rubber imported into [British India or
 British Burma]† from a place [outside
 India and Burma]‡ may apply to the Committee for an endorsement on
 the certif which such rubber was imported

(2) C the Committee shall make an
 endorsemen in in such form and subject to
 such condition as may be prescribed, and such endorsement shall be
 sufficient to authorise the export from [British India]‡ of such rubber

19 (1) The Committee shall maintain an account of every
 export quota allotted by it showing, in
 Committee to maintain accounts of quotas addition to such other particulars as the
 Committee may think fit, the licences
 issued against it and the unexhausted balance

(2) The Committee shall maintain an account of all rubber
 imported from a place outside [India and Burma]§ the export of which
 was authorised by it under sub section (2) of section 18

(3) Any owner of a rubber estate or factory shall be entitled on
 payment of the requisite fee to a copy of the account relating to his
 quota, certified in the manner laid down in the bye-laws

20 (1) No consignment of rubber shall be shipped or water-
 borne to be shipped for export from a
 Rubber for export to be port in [British India]‡ until the owner
 covered by licence and certifi- has delivered to the Customs-collector
 cate of origin either a valid export licence and a certi-
 ficate of origin, covering the quantity to be shipped, issued by or on
 behalf of the Committee, or, in the case of rubber to which the
 provisions of section 18 apply, a certificate of origin endorsed by or
 on behalf of the Committee

[(2) No permit for the passage of any rubber by land into any of
 the French or Portuguese Settlements bounded by India shall be
 granted under sub section (1) of section 5 of the Land Customs Act,
 1924 || unless the application for such permit is accompanied by a
 valid export licence and a certificate of origin, covering the quantity
 to be passed, issued by or on behalf of the Committee, or, in the case
 of rubber to which the provisions of section 18 apply, a certificate of
 origin endorsed by or on behalf of the Committee]¶

21 (1) The Committee may serve by post a notice upon the
 owner of any rubber estate or factory
 Power of Committee to call for requiring him to furnish within such period
 returns not being less than thirty days as may be

* In British India the words within brackets have been substituted by G I Order of
 1937 In Burma for these words read the words from British Burma vide G B
 Order of 1937

tuted by G I Order of
 ' read British Burma
 read 'outside Burma

‡ In Burma for the words ' British India read British Burma vide G B Order of
 1937

§ In British India the words within brackets have been substituted by G I Order of
 1937 In Burma for these words read the words ' Burma and India ' vide G B
 Order of 1937

¶ N.I. of 1924

* In Burma sub section (2) has been omitted by G B Order of 1937

specified in the notice, such returns relating to the area planted with rubber or to the production, manufacture, sale or export of rubber produced on the estate or manufactured in the factory as it may deem necessary to enable it to discharge its duties under this Act

(2) Where any return required under sub-section (1) in respect of any rubber estate or factory is not furnished to the Committee within the period specified in the notice, the Committee may refuse to allot a quota to that estate or factory under section 14 or, where a quota has already been allotted, may cancel the unexhausted balance of that quota and refuse to issue any further export licences and certificates of origin under section 15 against that quota.

Fees.

22 (1) The Committee may charge and collect the following fees, namely:—

(a) a licence fee for every export licence issued by it, at such per hundred pounds of rubber covered [Government]* may, by notification in his behalf, and

fixed copies of accounts of quotas at the rate of one rupee per copy.

Provided that the owner of any rubber estate or factory to which a quota has been allotted under section 14 may make a consolidated payment of export licence fees at the rate fixed under clause (a) to cover the whole of the quota

(2) The Committee shall apply the fees collected by it under this section to the meeting of expenses incurred by it in pursuance of the purposes of this Act and, with the previous sanction of the [Central Government]* to the payment of a contribution towards the maintenance of any international committee established in furtherance of the interest of the rubber industry in rubber-producing countries generally.

23 (1) All licences and certificates of origin for the export of rubber and all quotas issued or fixed by the Committee constituted Validation of acts already done by it shall be deemed to be licences under this Act.

(2) All transfers of the right to obtain export licences and certificates of origin from the said Licensing [Committees]† shall be valid as if they had been made under this Act

Power to make rules

24 The [Central Government]* may, by notification in the official Gazette† make rules,—

(a) prescribing the manner in which the export quotas of rubber estates and factories shall be determined,

1937. Order of
1937 1937
1937 1937

(b) prescribing the conditions subject to which the export [from British India]* of rubber imported into [British India or British Burma from a place outside India and Burma]† may be permitted and the form of endorsement to be made on the certificates of origin accompanying such rubber,

(c) prescribing the manner in which the right to export rubber to which sub section (2) of section 5 applies shall be allocated among rubber estates and factories,

(d) prescribing the form of export licences and certificates of origin, and

(e) generally to carry out the purposes of this Chapter

25 No quota fixed and no order granting or refusing to grant any licence or certificate of origin under this Chapter shall be called in question in any Court

Bar of jurisdiction

CHAPTER III

CONTROL OVER EXTENSION OF RUBBER CULTIVATION

26 So long as this Act remains in force no person shall plant rubber plants in any land, or re-plant any land with rubber plants, save in pursuance of a written permission granted by or on behalf of the Committee under this Act

27 (1) Permission under section 26 to plant rubber plants shall be granted only in respect of an area intended for the cultivation of rubber plants for exclusively experimental purposes and such area shall in every case be limited to the area necessary for such purposes

(2)†

[(3) The total area of land in any province§ in respect of which permission to plant rubber may be granted shall be such area being as nearly as may be one-quarter of one per cent of the total area in the province which was planted with rubber plants on the 1st day of June 1934, as the "Committee" || by notification in the Gazette of India may specify in this behalf]¶

Permission to re-plant land with rubber plants

28 Permission under section 26 to re-plant land with rubber plants shall be subject to the following limitations namely,—

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words from British Burma vide G. B. Order of 1937.

† In British India the words within brackets have been substituted by G. I. Order of 1937. In British Burma or British India from a notified In Burma the following sub

in respect of which permission to plant rubber may be granted shall be such area being as nearly as may be one-quarter of one

(a) no person shall be permitted to re-plant in any one year more than ten per cent of the area of his estate that was planted with rubber plants on the 1st day of June, 1934, and

(b) no person shall be permitted to re-plant more than twenty per cent of such area in all before the 31st day of December, 1938

29. (1) Application for permission to plant rubber plants or to re-plant land with rubber plants shall be made to the Committee and shall contain a clear statement of all special circumstances justifying the application.

(2) Subject to the provisions of sections 27 and 28, the Committee may grant or refuse the permission applied for, or may call for further information from the applicant

(3) No order by the Committee under sub-section (2) shall be called in question in any Court

30. (1) Any applicant aggrieved by an order of the Committee under section 29 may appeal to the [Provincial Government]* within sixty days from the date thereof, and the [Provincial Government]* may on such appeal cancel, modify or suspend any order of the Committee under that section

(2) The records of the Committee relating to proceedings under this Chapter shall be open to inspection at all reasonable times by any officer authorised in this behalf by the [Provincial Government]*

31 (1) The Committee may serve by post a notice upon the owner of any rubber estate, requiring him to furnish within such period not being less than thirty days as may be specified in the notice, such returns relating to the cultivation of rubber plants on the estate as it may deem necessary to enable it to discharge its duties under this Act

(2) Any member of the Committee, and any officer of the Committee authorised by it in this behalf may, at any reasonable time, enter upon and inspect any portion of any rubber estate and may require the owner of the estate to produce for inspection any records of the estate in his control or custody relating to the cultivation of rubber plants and the stocks of rubber on the estate.

(3) Where any return required under sub-section (1) in respect of any rubber estate is not furnished to the Committee within the period specified in the notice, the Committee may refuse to grant any permission under section 29 to plant rubber plants on that estate, or to re-plant any part of that estate

CHAPTER IV.

SUPPLEMENTAL

32 No rubber shall be imported by sea or by land into [British India]† from any place [outside India and Burma]† unless covered by a certificate of origin issued by an official empowered in

Certificate of origin for imported rubber.

by G. I. Order of 1937
Order of 1937
der of 1937
1937 In Burma
7.

that behalf by the Government of the country where the rubber was grown or produced

33 No person shall export the leaves, flowers, seeds, buds, twigs, branches roots of any living portion of the rubber plant that may be used to propagate it

Prohibition of export of leaves etc., of rubber plants

34 (1) The owner of every rubber estate or factory and every person holding stocks of rubber shall submit to the Committee at such time and in such form as may be prescribed, a return showing the stocks of rubber held by him together with such further information in regard thereto as may be prescribed

Submission of returns showing stocks of rubber in India

(2) The Committee shall compile from such returns and submit to the [Central Government]* at such times and in such form as may be prescribed, consolidated statements showing the total amount of stocks of rubber held [in British India] ††

35 Any member of the Committee or of a sub-committee and any officer of the Committee authorised by it in this behalf may, at any reasonable time, enter upon and inspect any factory and may require any owner of a factory to produce for inspection any records of the factory in his control or custody relating to the manufacture in and export from the factory of rubber or to the stocks of rubber held in the factory

Member may inspect factories

36 The [Central Government]* may, by notification in the [official Gazette] § make rules—

Power to make rules

(a) prescribing the dates on which and the form in which returns of stocks shall be submitted to the Committee,

(b) prescribing the further information, if any to be included in such returns,

(c) prescribing the dates on which and the form in which consolidated statements of stocks shall be submitted by the Committee, and

(d) generally to carry out the purposes of this Chapter

CHAPTER V

PENALTIES AND PROCEDURE

37 A breach of the provisions of sub-section (1) or sub-section (2) of section 20 or of section 32 or of section 33 shall be punishable as if it were an offence under item 8 of section 167 of the Sea Customs Act, 1878|| and the provisions of section 168 and of Chapter XVII of that Act shall apply accordingly

Penalty for illicit import or export

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Governor' vide G B Order of 1937

† In Burma for the words within brackets read 'in British Burma' vide G B Order of 1937

‡ Certain words after this, repealed by G I Order and G B Order of 1937, have been omitted

§ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word 'Gazette' vide G B Order of 1937.

|| Act VIII of 1878

38 If default is made in submitting any return as required by sub-section (1) of section 34, the owner of the estate or factory as the case may be, shall be punishable with fine which may extend to five hundred rupees

Penalty for default in submitting return

39 Any owner of a rubber estate or factory or any person holding stocks of rubber who has furnished any return under sub-section (1) of section 21, or sub-section (1) of section 31 or sub-section (1) of section 34 containing any particular which is false and which he knew to be false or did not believe to be true, shall be punishable with fine which may extend to one thousand rupees

Penalty for making false return

40 Whoever obstructs any member of the Committee or of a sub-committee or any officer of the Committee while such member or officer is entering upon or inspecting any rubber estate under sub-section (2) of section 31, and whoever, having control over or custody of any records of a rubber estate relating to the cultivation and stocks of rubber on that estate, refuses or fails to produce such records when required by a member of the Committee or of a sub-committee or an officer of the Committee under that sub-section shall be punishable with fine which may extend to one thousand rupees

Penalty for obstructing inspection of rubber estate

41 Whoever obstructs any member of the Committee or of a sub-committee or any officer of the Committee while such member or officer is entering upon or inspecting a factory under section 35, and whoever, having control over or custody of any records of a factory relating to the manufacture in or export from the factory of rubber or to the stocks of rubber held in the factory, refuses or fails to produce such records, when required by a member of the Committee or of a sub-committee or an officer of the Committee under that section, shall be punishable with fine which may extend to one thousand rupees

Penalty for obstructing inspection of factory.

42. Whoever plants rubber plants or causes rubber plants to be planted or re-plants or causes to be re-planted on any land in contravention of section 26 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence

Penalty for illicit cultivation.

43. Where any person has been convicted of an offence under section 42 the convicting Court shall direct that the rubber plants in respect of which the offence was committed shall be removed from the land within a period of the order not being duly complied with, and the person convicted shall be liable to pay the cost of removal of the plants to be removed and recover the cost from the person convicted as if it were an arrear of land revenue due on the rubber estate on which the offence was committed.

Removal of rubber plants planted without permission

- 44** (1) No Magistrate other than a Magistrate of the first class shall take cognizance of an offence under section 38, 39, 40, 41 or 42 and such Magistrate may take cognizance of such an offence only upon complaint made by a person authorised by the Committee in this behalf, and with the previous sanction of the [Central Government in the case of offences under sections 38 and 41, and in the case of offences under section 39 arising from false returns under sub-section (1) of section 21 or sub-section (1) of section 34, and of the Provincial Government in other cases]*
- (2) The Committee shall be responsible for the conduct of all prosecutions of offences under sections 38, 39, 40, 41 and 42

THE INDIAN SALT ACT (XII OF 1882.)

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* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor, ' vide G B Order of 1937

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31 [Repealed]

SCHEDULE —Enactments repealed

THE INDIAN SALT ACT, 1882

(ACT NO XII OF 1882)

(Received the Governor-General's assent on the 10th March 1882)

An Act for regulating the duty on Salt and for other purposes

WHEREAS it is expedient to amend the law relating to the levy of

Preamble

duty on salt, and to the import and transit of salt the manufacture of salt and saltpetre, into, over and in British India, It is hereby enacted as follows —

Notes —The salt duty is a great source of revenue of the Central Government To impose duty on such an important article of food is rather arbitrary and unjust Doing anything in contravention of Salt Act or rule thereunder or abetment of such an act is not separate offence under Penal Code s 40 A I R 1930 Oudh 497=193 Ind Cis 211

CHAPTER I

PRELIMINARY

Short title

1 This Act may be called the Indian Salt Act 1882 *

This section, sections 2, 7 and 8 and so much of this Act as refers to offences against any of its provisions or against any rules made under it extend to the whole of British India

Local extent

The rest of this Act extends to the territories† respectively administered by the Lieutenant Governors of the North Western Provinces and the Punjab, and the Chief Commissioners of Oudh the Central Provinces and Ajmeer and Merwara ‡ to the District of Patna Division and to British territory under the jurisdiction of the Agent to [Central Government] §

and any portion of this Act other than the portions specified in the second paragraph of this section may be extended by order of the [Central Government] § published in the [official Gazette] § to any part of British India other than the territories † and districts mentioned in the third paragraph of this section

Power to extend Act

Parganas (except s 31) by
Fish Baluchistan by Reg 1
18 of 1891 s 4 and in the

Repeal of enactments **2** [*Repealed by Act I of 1937*]

Interpretation clause **3** In this act unless there be something repugnant in the subject or context —
the expression the said territories means the territories to which the section of this Act in which that expression occurs for the time being extends,

The said territories
"Assistant Commissioner means an Assistant Commissioner of Northern India Salt revenue and also includes any person invested by the [Central Government]* with the powers of an Assistant Commissioner under this Act

"Salt revenue officer" means any officer of the Northern India Salt Department and also includes any person invested by the [Central Government]* with any of the powers of a salt-revenue officer under this Act,

'saltpetre' includes rasi, saji and all other substances manufactured from saline earth and kharinun and every form of sulphate or carbonate of soda and

'manufacture of salt' includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce elementary salt and the excavation or removal of natural saline deposits or efflorescence,

Kohat salt 'Kohat salt means salt produced in the district of Kohat in the Punjab †

4 The powers and duties conferred and imposed by this Act, on a Commissioner of a Division may in places where there is no such Commissioner be exercised and performed by such officer as the [Central Government]‡ may from time to time appoint in this behalf

5 At the head of administration of the salt-revenue under this Act there shall be an officer called the Commissioner of Northern India Salt-revenue §

Notes —Sections 3, 4 and 5 are not in force in Upper Burma or in the Arakan District vide Act 13 of 1898 s 4 and Reg 1 of 1916 s 2

CHAPTER II

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Central Government— **6** The [Central Government]‡ may from time to time by rule—

(a) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of salt-petre, throughout the whole or any portion of the said territories

to regulate manufacture and refining of salt and saltpetre

(b) fix fees for the following licences not exceeding in the case of each such licence the amount herein after mentioned —

	Rs.
Licence to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	50
Licence to manufacture saltpetre	2
Licence to manufacture sulphate of soda (khari-mun) by solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (khari-mun) by artificial heat	2
Licence to manufacture other saline substances	2

(c) determine the manner time and place in and at which and the persons by whom any duty imposed hereunder shall be collected in the said territories,

(d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or [on behalf of the Central Government]* or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession storage and sale of salt within such area

(e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area

Notes — This section is in force in Upper Burma except the Shan States as well as in the Arakan Hill District vide Act 13 of 1905 s 4 and Reg 1 of 1916 s 2

CHAPTER III.

DUTY AND PRICE OF SALT

Power of Central Government

7 The [Central Government]* may from time to time, by rule consistent with this Act,—

to impose a duty on salt manufactured or imported by land,

(a) impose a duty not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in or imported by land into, any part of British India

to reduce or remit duties

(b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted

to fix minimum price of salt excavated etc by Government

(c) fix the minimum price at which salt excavated manufactured or sold by or on behalf of the [Central Government]* shall be sold

In calculating the amount of duty payable under this section fractions of quarter maunds may be reckoned as quarter maunds.

* Substituted by G. I. Order of 1937

Notes.—"The provisions of section 7 of the Indian Salt Act 1882 shall so far as they enable the Governor General in Council to impose by rule made under that section a duty on salt manufactured in or imported into any part of British India other than Burma and Aden, be construed as if with effect from the 1st day of April 1933 they imposed such duty at the rate of one rupee and four annas per maund of eighty two and two sevenths t and by rule 1 13 111 — vide

Power of Local Government to fix minimum price of salt excavated etc

8 [Omitted by G I Order of 1937]

CHAPTER III (A)*

INDUS PREVENTIVE LINE

Power to define zones and establish chains of posts

8A (1) The [Central Government]† may, from time to time, by rule—

(a) define a zone of country not exceeding fifteen miles in breadth—

(i) along any portion of the river Indus and at such distance therefrom as it deems expedient, or

(ii) in any tract extending from that river to the western frontier of the Punjab

(b) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(c) within such a zone establish a chain of posts extending along the zone

(2) The establishment of a chain of posts under clause (c) of sub-section (1) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870

8B When a zone has been defined and a chain of posts established under section 8A, the [Central Government]† may, from time to time, by rule—

(a) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and

(b) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing and being taken across such chain

CHAPTER IV

OFFENCES AGAINST THE SALT REVENUE

Penalties

9 Whoever commits any of the following offences (namely) —

* Ch III (1) has been inserted by Act VII of 1930

† The words within brackets have been substituted by G I Order of 1937.

(a) does anything in contravention of this Act or of any rule made hereunder,

(b) evades payment of any duty or charge payable under this Act or any such rule, or

(c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned in clauses (a) and (b) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both,

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule

Notes—When the salt duty imposed under the Salt Act has not been compounded under the Salt Act and payment of such duty is evaded the prosecution and conviction may be had under this section L B R (1893 1900) 252 The licensee of a salt factory is criminally liable for any evasion of payment of salt duty A W N 1891 181 s 117 of the Penal Code applies to abetment of offence under Salt Act by public generally 53 A 42 A I R 1931 Bom 110 but see A I R 1930 Oudh 497

10 Any person convicted of an offence under section 9 after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875* or under

Punishment on second and subsequent convictions

any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9

and every such person shall upon every subsequent conviction of an offence under section 9 be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction

Notes—To deter repetition of crime under this Act an additional punishment is imposed on second and subsequent conviction

11 A charge of an offence under section 9† shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a sub-inspector,

Charge by whom to be preferred

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers

Limitation
Jurisdiction

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class

N. S. M. 11 11 11 chiefly intended for civil application within the mean

12 h any offence mentioned in section 9 has been committed, together with the vessels packages or coverings in which such salt or saltpetre

Confiscation of articles in respect of which offence committed

* VIII of 1875

† Here certain words which were repealed by Act VII of 1891, have been omitted

is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation

When the article seized exceeds five seers in weight, the Commissioner of the Division in which the seizure takes place, may, if satisfied on the report of any Salt-revenue-officer or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit

If the article seized does not exceed five seers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five seers, and may also confiscate any vessel package or covering in which such article is contained

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained and any animal or conveyance used in carrying it

Notes—This section legalises the confiscation of articles in respect of which offence is committed. It also lays down the procedure as to how the confiscation is to be effected

13 The [Central Government]* may, from time to time, by rule, direct that any Salt revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed, exceeds five seers in weight, to the Commissioner of the Division in which such penalty is imposed, and if such salt does not exceed five seers in weight to the Assistant Commissioner

and shall require the sanction of the Commissioner or Assistant Commissioner as the case may be to whom it is so reported

Notes—Under this section Assistant Inspector can impose an additional duty on contraband salt but that duty shall not exceed the duty leviable thereon under Chapter III

14 Any zamindar or other proprietor of land and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9 shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to six months or with both

Notes—The zamindar or other proprietor of land are punished as abettors.

* Substituted by G. I. Order of 1937.

CHAPTER V

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST

- 15** Any Salt-revenue officer empowered in this behalf by the [Central Government]* may at any time enter and search any place in which any article is manufactured or refined under a licence granted under this Act or any rule made hereunder

Power to search places where article is manufactured under licence

Notes—This section is confined to the search of a place in which any article is manufactured or refined under the licence or any rule made under the Act 77 Ind Cas 815

Power to detain suspected person and to seize goods liable to confiscation

- 16.** Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act,

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed or that any duty is payable together with the vessels packages or coverings in which such salt or saltpetre is contained and the animals or conveyances used in carrying it

- 17** Any Salt-revenue-officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid

Power to arrest

Notes—Here arrest without warrant is contemplated

- 18** Whenever any Salt-revenue officer, not inferior in rank to a sub inspector has reason to believe that salt or saltpetre is being unlawfully manufactured refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (a) the name residence and calling of the informant (if any) (b) the locality and description of the house boat or place where the officer believes that the salt or saltpetre is being so manufactured refined, or stored, (c) the name of the person by or for whom the salt or saltpetre is so manufactured refined or stored, and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured refined or stored,

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him

and may then, after sunrise and before sunset (but always in the presence of an officer of police not inferior in rank to a head constable) enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured refined or stored

and in case of resistance may break open any door, and force and remove, any other obstacle to such entry,

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre,

* Substituted by G I Order of 1937

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement or storing of such salt or saltpetre on in the concealing thereof

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

19. Any officer in charge of a police-station who, on application in writing made by a Salt-revenue-officer to attend for any of the purposes specified in section 18 refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees

20 Whenever a Salt-revenue-officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act, or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate), within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior, for the information of the Assistant Commissioner

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person

Every officer of police attending any search made under section 18 shall report the same to his official superior

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five seers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12

If the articles seized does not exceed five seers in weight, Assistant Commissioner may dispose of the case himself under said section

22 Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section.

Procedure on detention of article subject to additional duty
 Provided that if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt revenue-officer, detaining the same such article shall be at once released.

When an article is so detained it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

23 Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Notes —The prisoner should be produced before a Magistrate with as little delay as possible.

24 All officers of police, and all officers of Government engaged in the collection of land revenue, are hereby empowered and required to assist the Salt revenue officers in the execution of this Act.

Officers required to assist Salt revenue officers
 Vexatious search seizure etc , by Salt revenue-officer.

25 Any Salt-revenue officer who—
 (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place

(b) vexatiously and unnecessarily detains, searches or arrests any person ,

(c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ,

(d) commits, as such officer, any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both

A Salt-revenue-officer shall not be deemed to search or detain any person, or to seize the movable property of any person, vexatiously and unnecessarily within the meaning of clause (b) or clause (c) of the first paragraph of this section if the search is authorised by any rule under clause (b) of section 8B, and the detention or seizure is such as is necessary for the purposes of such search *

Notes.—This section safeguards the vexatious searches by salt officers

26 The [Central Government]† may, from time to time, make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Power to regulate seizures and disposal of things seized.

Such rules may, among other matters, provide—

(a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale .

(b) that, when anything is seized and an order for its release is subsequently passed and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale

(c) that the surplus proceeds of a sale under clause (a) or clause (b) of this section shall unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty

CHAPTER VI

MISCELLANEOUS

27 The [Central Government]† may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof

Power to prohibit import and transit of salt

Except in the case of a prohibition under this section, nothing in this Act shall apply to the territories, :

* This paragraph has been added by Act XIV of 1900, s 8

† Substituted by G. I. Order of 1937

Nothing in this section shall be deemed to affect Chapter III(A) of this Act or any rule under that Chapter *

Notes—There is nothing in this section to bear out the contention that importation into a part of the territories mentioned in s 1 is to be taken as meaning only importation from outside the territories and not importation from one part of the territories into another part 69 Ind Cas 460=23 Cr L J 792

Further matter for which Central Government may make rules

28 In addition to the rules which the [Central Government][†] is herein before empowered to make, it may from time to time, make rules, consistent with this Act to regulate the following matters, namely—

(a) the persons by whom and the time, place and manner at or in which anything to be done under this act shall be done

(b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt revenue-officers under this Act shall be appealable

(c) the fee to be charged on account of any licence pass certificate, dakhila, rawana or other such document issued under this Act

and generally to carry out the provisions herein contained

Publication of rules

29 All rules made under this Act shall be published in the [official Gazette][†] and shall thereupon have the force of law

30 Subject to the provisions herein contained, and to any rules for the time being in force made by the

Power to confer powers of Assistant Commissioner and Salt revenue officer [Central Government]^{††} the Commissioner of the Northern India Salt-revenue may

invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue-officers

31 (*Repealed by Act XIX of 1890*)

SCHEDULE—[*Repealed by Act I of 1938*]

(See Section 2)

ENACTMENTS REPEALED

ACTS OF THE GOVERNOR GENERAL IN COUNCIL

Number and year	Short title	Extent of repeal
VIII of 1875	The Inland Customs Act 1875	The whole
II of 1876	The Burma Land and Revenue Act 1876	Section 39 clause (b) and clause (c) of the same section the words and letters under clause (b)
XVIII of 1877	The Salt Act 1877	The whole

* This paragraph has been added by Act XIX of 1890 s 4

[†] Substituted by G I Order of 1937

^{††} Certain words after this repealed by G I Order of 1937 have been omitted

REGULATION

Number and year	Short title	Extent of repeal
III of 1877	The Ajmir Laws Regulation, 1877	Sections 36 and 37

ACT OF THE LIEUTENANT GOVERNOR OF BENGAL IN COUNCIL

Number and year	Short title	Extent of repeal
VII of 1864	The Salt Act 1864	Section 9

THE SARAI ACT (XXII OF 1867)

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THE SARAI ACT, 1867

(ACT XXII OF 1867.)

(Received the Governor-General's assent on the 15th March 1867)

An Act for the regulation of Public Sarais and Puraos

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos It is hereby enacted
Preamble
as follows —

1 [Repeal of Bengal Regulation XII of 1807, section 11, clause (5)—Repealed by Act XII of 1891]

Interpretation clause

2 In this Act, unless there be something repugnant in the subject or context,—

"Saraï" means any building used for the shelter and

'Saraï'

of travellers and includes, in any which only part of a building is

saraï the part so used of such building

It also includes a purao so far as the provisions of this Act are applicable thereto

' Keeper of a Sarai ' "Keeper of a Sarai" includes the owner and any person having or acting in the care or management thereof

"Magistrate of the District" * means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation †

3 Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai and shall by such notice require the keeper to register the sarai as by this Act provided

Form of notice Such notice may be in the form in the schedule to this Act annexed or to the like effect

4 The Magistrate of the District shall keep a register in which shall be entered by such Magistrate, or Registers of sarais to be kept such other person as he shall appoint in this behalf the names and residences of the keepers of all sarais within his jurisdiction and the situation of every such sarai

No charge shall be made for making any such entry

5 After one month after the giving of such notice to register as by this Act provided, the keeper of any Lodgers etc not to be received in sarais until registered sarai or any other person shall not receive any lodger or allow any person, cattle, sheep elephant, camel or other animal, or any vehicle, to halt or be placed in such sarai until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided

6 The Magistrate of the District may, if he shall think fit, refuse to register, as the keeper of a sarai a person who does not produce a certificate of character in such form and signed by such person as the [Provincial Government] ‡

shall from time to time direct

Duties of keepers of sarais 7 The keeper of a sarai shall be bound—

(1) When any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police station

(2) at all times, when required by any Magistrate or any other person duly authorised by the Magistrate of the District in this

* This reference should now be read as 'District Magistrate' see Criminal Procedure Code (Act V of 1898) s 3

† Here certain words repealed by Act 10 of 1914 and G I Order of 1937, have been omitted

‡ Substituted by G I Order of 1937,

behalf, to give him free access to the sarai and allow him to inspect the same or any part thereof

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarai, and the walls, tanks or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai

(5) to keep the gates, walls, fences, roofs and drains of the sarai in repair

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the [Provincial Government]* may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in the sarai and

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct

8 The keeper of a sarai shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate or to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him

9 If any sarai, by reason of abandonment or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai, requiring the persons concerned therein, whoever they may be, to secure, enclose clean or clear the same,

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the

* Substituted by G. I. Order of 1937

owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein

10 If a sarai or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the sarai, he shall give notice in writing to the keeper of the sarai requiring him forthwith to take down, repair or secure (as the case may be) the sarai or such part thereof as the case may require

If the keeper do not begin to take down, repair or secure the sarai, or such part as aforesaid within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired or otherwise secured

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned

11 If any such sarai or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the over-plus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act

12 Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or, after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such a state or so overgrown as aforesaid shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties

13 The [Provincial Government]* may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

All regulations made under this Act and all repeals thereof, and alterations and additions thereto, shall be published in the [official Gazette].*

* Substituted by G I Order of 1937

14 If the keeper of a sarai offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees and to a further penalty not exceeding one rupee a day for every day during which the offence continues

Penalty for infringing Act or Regulations
 Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act

Recovery of penalties
 All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under sections, 386 387 and 389 of the Code of Criminal Procedure *

15 Where a keeper of a sarai is convicted of a third offence under this Act he shall not afterwards act as keeper of a sarai without the licence in writing of the Magistrate of the District, who may either withhold such licence, or grant the same on such terms and conditions as he may think fit

Conviction for third offence to disqualify persons from keeping sarais
16 No part of this Act except section 8 shall apply to any sarai which may be under the direct management of the [Provincial Government]† or of any Municipal Committee

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17 This Act shall in the first instance extend only to the territories under the Government of the Lieutenant Governor of the North-Western Provinces of the Presidency of Fort William in Bengal

Extent of Act
 But it shall be lawful for the [Provincial Government]† by notification in the [official Gazette] † to extend this Act, *mutatis mutandis* to any other part of except the towns of Calcutta, Madras and Bombay §

Power to Provincial Government to extend this Act
18 This Act may be called the Sarais Act 1867

Short title

SCHEDULE FORM OF NOTICE

Take notice that on the	day of	1867 an Act called the Sarais Act
1867 was passed and that before the	day of	18 you being keeper
		ion of the
		and that
		if you do
		exceeding
		every day
		name and
		rec of all

1867

1867

1867

* See Act V of 1893

† Substituted by G. I. Order of 1937

‡ Certain words after this repealed by C. I. Order of 1937 have been omitted

§ Here certain words repealed by Act VII of 1891 have been omitted

THE SEA CUSTOMS ACT, 1878

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THE SEA CUSTOMS ACT 1878 *
(ACT VIII OF 1878.)

An Act to consolidate and amend the law relating to the levy of
Sea Customs duties

(Received the Governor General's assent on the 8th March, 1878)

WHEREAS it is expedient to consolidate and amend the law relat
ing to the levy of Sea Customs duties.
It is enacted as follows —

Preamble

Notes—Under the Sea Customs Act as amended by the Merchandise Marks Act
although ordinarily action thereunder is taken upon information received from the
manufacturer or merchant aggrieved there is nothing to prevent the Customs officers
from acting upon their own initiation The provisions in the Act are intended for the
benefit of the public also A I R 1930 Cal 1=46 C L J 455 The object of the Act
is to authorise Customs authorities to release ship if there are some persons responsible
for claims against her within jurisdiction A I R 1931 Sind 124-25 S L R
222=133 Ind Cas 77

CHAPTER I
PRELIMINARY

Short title

1 This Act may be called the Sea
Customs Act 1878

Local extent Commencement

It extends to the whole of [British
India]† and shall come into force on the
first day of April, 1878

of India 1876 Pt V p 1401
V p 491, for Proceedings in
377 Supplement p 2770 *ibid*

) is to be read with and taken
the Act in the
(except the Shan
see the Angul

Laws Regulation 1913 (3 of 1913) s 3
† In Burma for British India read British Burma vide G B Order of 1937

2 [Repealed by Act I of 1938.]

Interpretation

3 In this Act unless there be something repugnant in the subject or context,—

[(a) "Chief Customs authority" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes in relation to any power or duty which the "Central Government" may, by notification in the Gazette of India, transfer from the Central Board of Revenue "and entrust to a Provincial Government or to an officer of a Provincial Government under section 124 (1) of the Government of India Act, 1935, such Government or officer, as the case may be"*)†

(b) "Chief Customs-officer" denotes the Chief Executive Officer of Sea-customs for any port to which this Act applies

(c) "Customs-collector" includes every officer of Customs for the time being in separate charge of a customs-house, or duly authorised to perform all, or any special, duties of an officer so in charge

(d) "customs-port" means any place‡ declared under section 11 to be a port for the shipment and landing of goods .

(e) "foreign port" means‡ any place beyond the limits of British India .

(f) "vessel" includes anything made for the conveyance by water of human beings or property

(g) "coasting vessel" denotes any vessel proceeding from one customs-port to another customs-port, whether touching at any intermediate foreign port or not, or proceeding from or to a customs-port to or from a place declared to be a port under section 12

(h) "master," when used in relation to any vessel, means any person, except a pilot or harbour-master having command or charge of such vessel .

(i) "warehousing port" means any customs-port declared under section 14 to be a warehousing port

(j) "warehouse" denotes any place appointed or licensed under section 15 or section 16 ‡

4 When any person is expressly or impliedly authorised by the

Agent of owner of goods to be deemed owner for certain purposes
owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorisation is approved by the Customs collector, such person shall, for such purposes, be deemed to be the owner of such goods

* Substituted by G. I Order of 1937

5 Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent.

CHAPTER II

APPOINTMENT AND POWERS OF OFFICERS, ETC

* 6 The [Central Government]† may appoint such persons as he thinks fit to be officers of Customs and to exercise the powers conferred, and perform the duties imposed, by this Act on such officers

[7 Omitted by G. I. Order of 1937]‡

8 At any place for which there is no Custom house, the Collector of the District and the officers subordinate to him shall unless the [Central Government]† otherwise directs, perform all duties imposed by this Act on a Customs collector and other officers of Customs

Performance of duties of Customs-collector, where no Custom house

9 The Chief Customs authority may from time to time, § make rules consistent with this Act—

(a) prescribing and limiting the powers and duties of officers of Customs,

(b) regulating the delegation of their duties by such officers, and

(c) generally to carry out the provisions of this Act.

10 No Chief Customs authority or Chief Customs-officer and no other officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty shall be compelled to serve on any jury or inquest, or as an assessor

Customs-officers exempted from service on jury or inquest or as assessors

CHAPTER III

APPOINTMENT OF PORTS, WHARVES, CUSTOM HOUSES, WAREHOUSES AND BOARDING AND LANDING STATIONS

11 [The Chief Customs authority]* may from time to time, by notification in the official Gazette,—

(a) declare the places which alone shall be ports for the shipment and landing of goods |

Power to appoint ports wharves and Custom house

† 1937

‡

upon Customs any power so delegated to it

§ Certain words after this repealed by Act 4 of 1914 have been omitted
| Certain words after this repealed by Act IV of 1924 have been omitted

substituted by G. I. Order of 1937
vide G. B. Order of 1937

authority any power conferred may be delegated to any officer of

- (b) declare the limits of such ports
 (c) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods ,
 (d) declare the limits of any such wharf ,
 (e) alter the name of any such port or wharf , and
 (f) declare what shall, for the purposes of this Act, be deemed to be a custom house, and the limits thereof

12 * [The Chief customs authority] may also from time to time in like manner declare places to be ports for the carrying on of coasting-trade with customs-ports, or with any specified customs-port, and for no other purpose

13 The [Central Government]† may from time to time direct, by notification in the [official Gazette]‡ that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs port shall, within such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be

14 * [The Chief Customs authority] may from time to time declare, by notification in the official Gazette, that any customs port shall be a warehousing port for the purposes of this Act

15 At any warehousing port § the * [Chief Customs-officer] may, from time to time appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment

16 At any warehousing port * [the Chief Customs-officer] may from time to time license private warehouses|| wherein dutiable goods may be deposited as aforesaid

Every application for a licence for a private warehouse shall be in writing and shall be drawn up in such form as is from time to time prescribed by the * [Chief Customs-officer] and shall be signed by the applicant

Every licence granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the licence, or on the expiration

* These words were substituted by Act IV of 1924

† In British India the words within brackets have been substituted by G. I. Order of 1937
 ‡ Order of 1937
 § by G. I. Order of 1937
 || or license a private the Inland Bonded

warehouse
 in Arms Act,

of one month's notice in writing given to the licensee by the Chief Customs-officer

17 The *[Chief Customs officer] may from time to time appoint Stations for Customs officers to in or near any customs port stations or board and land limits at or within which vessels arriving at or departing from such port shall bring to for the boarding or landing of officers of Customs and may unless separate provision therefor has been made under the Indian Ports Act, 1875,† direct at what particular place in any such port vessels not brought into port by pilots shall anchor or moor

CHAPTER IV

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION

18 No goods specified in the following clauses shall be brought whether by land or sea, into [British India]‡

(a) §

[(b) counterfeit coin or coin which purports to be Queen's coin of India or to be coin made under the Native Coinage Act 1876, but which is not of the established standard in weight or fineness]||

(c) any obscene book pamphlet, paper drawing painting representation figure or article

*[(d) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code or a false trade-description with in the meaning of the Indian Merchandise Marks Act 1889]

*[(e) goods made or produced beyond the limits of the [United Kingdom, British India and British Burma]** and having applied thereto any name or trade mark being, or purporting to be †† the name or trade mark of any person who is a manufacturer, dealer or trader in the [United Kingdom in British India or in British Burma]** unless—

(i) the name or trade mark is, as to every application thereof accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the [United Kingdom, British India and British Burma]** and

7
id schedule of the Indian

at co n but wh ch is not of

by s 10 (1) of the Ind an

y names brands or marks
manufacturers res lent in the
ufacturers

337
repealed by s 2 of the Sea

**[(ii) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade mark]

†[(f) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the [limits of India] † or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which if they were in British India, would be a factory as defined in the Indian Factories Act, 1881 §

‡[(g) matches made with white phosphorus]

19 The [Central Government][†] may, from time to time, by notification in the [official Gazette] ** prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India †† [across

Power to prohibit or restrict importation or exportation of goods

any customs frontier as defined by the Central Government] ‡‡

Notes.—The Government can prohibit the export of specified articles but description of different commodities *ejus dem generis* under a vague description is not enough 40 B 301 17 Bom L R 1087 33 Ind Cas 205 Wholesale price can include service charges and no middle man is necessary to make it wholesale price 128 Ind Cas 554

§§19A (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation therefor under this Act, the Chief

Detention and confiscation of goods whose importation is prohibited

Customs-officer or other officer appointed by the ‡‡[Chief Customs-authority] in this behalf may require the regulations under this section, whether as to information, security conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported

(2) The [Central Government][†] may make regulations either general or special, respecting the detention and confiscation of goods

* These words were substituted for the words that place and the country in which it is situated are by s 3 of the Indian Merchandise Marks and Sea Customs Acts

† 1850 (4 of 1850)
B Order of 1937

‡ See Prohibition Act

** In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

†† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

‡‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for the words read the words or any specified part thereof either generally or from or to any specified country region port or place beyond the limits British Burma

§§ Section 19A was inserted by Act 4 of 1850

|| Substituted by Act IV of 1914

the importation of which is prohibited, and the conditions, if any to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence

(3) Where there is on any goods a name which is identical with or a colourable imitation of, the name of a place in the [United Kingdom, British India or British Burma] * that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the [United Kingdom, British India or British Burma] *

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods

(5) The regulations may provide for the informant reimbursing any public officer and the [Central Government]† all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention

[(6) All regulations under this section shall be published in the Gazette of India and, with the consent of the Provincial Government concerned, in the official Gazette of each Province]‡

CHAPTER V

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES.

20 Except as hereinafter provided, Customs-duties shall be levied at such rates as may be prescribed by or under any law for the time being in force, on—

Goods dutiable

(a) goods imported or exported by sea into or from any customs-port from or to any foreign port ,

(b) opium, salt or salted fish imported by sea from any customs port into any other customs port ,

(c) goods brought from any foreign port to any customs port, and without payment of duty, there transhipped for, or thence carried to and imported at, any other customs-port , and

(d) goods brought in bond from one customs-port to another §

21 Except as otherwise expressly provided by any law for the time being in force, goods whereof any

Goods partially composed of dutiable articles

article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one

article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty

***22** The [Central Government]† may from time to time, by notification in the [official Gazette],‡ fix, for the purpose of levying duties, tariff values of any goods exported or imported by sea on which customs-duties are by law imposed and alter any such values fixed§ by any Tariff Act|| for the time being in force

23. The [Central Government]† may from time to time by notification in the [official Gazette]† exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods

‘The Chief Customs-authority’¶ may,** “with the previous sanction of the [Central Government]†” by special order in each case, exempt from the payment of duty under circumstances of an exceptional nature to be stated in such order, any goods on which customs-duties are leviable

24 The Customs collector may subject to any general rules relating to the landing and shipping of passengers’ baggage and the passing of the same through the custom-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use or as goods subject to duty

25 If goods produced or manufactured in [British India]†† be imported into any customs-port from any foreign port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty

* Section 22 has been repealed by a 5 and 2nd Sch dule to the Indian Tariff (Amendment) Act 1916 (4 of 1916) so far as it relates to that Act

† In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

26 Any goods produced or manufactured in [British India]*

Excise duty on importation of certain country goods which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall on being imported into any customs-port be subjected, unless the †[Chief Customs-officer] in any particular case otherwise directs by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port.

27 All goods derelict, jetsam, flotsam and wreck, brought or

Goods derelict and wreck coming into any place in [British India]* shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs port, and shall in other respects be dealt with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free

28 Provisions and stores produced or manufactured in [British

Country provisions and stores may be shipped free of duty India],* required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration

29 On the importation into, or exportation from, any customs-

Owner to declare real value, etc., of goods in bill of entry or shipping bill port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill

In case of doubt, the Customs-collector may require any such

Power to require production of invoice, etc owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish And thereupon such person shall produce such document and furnish such information.

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public

* In Burma for "British India" read "British Burma," vide G B Order of 1937

† Substituted by Act IV of 1914

warehouse appointed under section 15 with out warehousing the same, pending the production of such information.

"Real value" defined **30** For the purposes of this Act the real value shall be deemed to be—

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof : or

(b) Where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid

Notes —Ss 29 and 30 are of taxing Act, and hence are not to be passed against taxpayer 34 Bom L R 1057 = 56A 313 = A I R 1532 P C 168 (P C) Wholesale cash price is that price current for staple article in trade circle *Ibid* 'Wholesale cash price' means the market price at the time and place of importation Clause (b) applies only when the wholesale cash price is not ascertainable 21 Bom L R 198 = 47 B 174 = 67 Ind Cas 267.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith

32 If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof, as stated in the bill of entry or shipping bill, such officer may detain such goods

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him, and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of [Central Government]*

If the goods be retained for the use of [Central Government]*, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the [official Gazette]† or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buying the goods, and without unnecessary delay dispose of them for the benefit of [Central Government]*.

* In British India the words within brackets have been substituted by G I Or of 1937. In Burma for these words read the word "Government" vide G. B. C. 1937

† In British India the words within brackets have been substituted by G 1937. In Burma for these words read the word "Gazette," vide G. B. C.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the over plus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the undervaluation of the goods

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such undervaluation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine

33 If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill of entry, of value less than that stated in such bill the Customs collector, on being satisfied of the fact, may allow abatement of duty accordingly

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner —

(a) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed, or

(b) the goods may, after due notice in the [official Gazette]* or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry) and at such place, as the Customs collector appoints, and the duty may be assessed on the gross amount realised by such sale, without any abatement or deduction, except (in the case of goods imported) or so much as represents the duties payable on the importation thereof

34 When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill of entry, deteriorated to the extent of more than one-tenth of their value the duty on such goods shall, if the owner thereof so desire be assessed *ad valorem*

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon

† **34A** Where the Customs-collector is satisfied that any goods on which duties are levied on quantity and not on value, and which are of a kind to which the [Central Government]‡ has by notification in the [official Gazette]* declared that the provisions of this section shall apply, have before

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Gazette vide G B Order of 1937

† Inserted by Act 8 of 1927

‡ In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor, vide G B Order of 1937

delivery of the bill of entry deteriorated to the extent of more than one-tenth of their value, he may allow an abatement of duty proportionate to the extent of such deterioration'

35 No abatement of duty on account of "any deterioration"* shall be allowed on wine, spirit or beer, or 'save as provided by section 34A'† on any other articles on which duties are levied on quantity and not on value

No abatement when duty is levied on quantity

36 Except as provided in section 94 no amendment of a bill of entry or shipping bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the custom-house

Restriction on amendment of bill of entry or shipping bill

37 The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill of entry thereof is delivered to the Customs collector under section 86

Alteration of import duty or tariff valuation

‡ Provided that, if such goods are warehoused under this Act the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date §[of the actual removal of such goods from the warehouse in the case of goods delivered out of a warehouse for home-consumption, and in the case of goods delivered out of a warehouse for removal under bond to be re-warehoused where the duty is paid on such goods without their being re-warehoused, the rate and valuation (if any) in force on the date on which duty is paid]

Explanation—A bill of entry shall for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs

Notes—Article duty paid means article for which duty is to be paid by seller Where articles were sold in bonded warehouse and duty was increased before delivery the purchaser must tender full price including increased duty for getting delivery 63 M L J 565—35 M L W 588=56 L 334—A I R 1933 Mad 21

38 The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137

Alteration of export duty or tariff valuation

¶[Provided that where the shipment of any goods is permitted without a shipping bill or in anticipation of the delivery of a shipping bill, the rate of duty and tariff valuation, if any, applicable shall be the rate and valuation in force at the time when shipment of the goods commences]

* Substituted by Act 8 of 1927

† Inserted by Act 8 of 1927

‡ This provision was substituted for the original proviso by s 1 of the Sea Customs Act (1878) Amendment Act 1889 (8 of 1889)

§ These words were substituted for the words on which application is made clear such goods from the warehouse for home consumption by s 2 of the Sea Customs (Amendment) Act 1915 (9 of 1915)

¶ This proviso was added by s 3 of the Sea Customs Act 1914 (12 of 1914)

39. When customs-duties or charges have been short levied*

Payment of duties short levied through inadvertence, error, collusion or
or erroneously refunded misconstruction on the part of the officer
of Customs, or through mis-statement as

to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has
been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to
whom such refund has erroneously been made, shall pay the deficiency or
repay the amount paid to him in excess, on demand being made within
three months from the date of the first assessment or making of the
refund,

and the Customs-collector may refuse to pass any goods belonging
to such person until the said deficiency or excess be paid or repaid

40 No customs duties or charges which have been paid, and of

No refund of charges erro which repayment, wholly or in part, is
neously levied or paid, unless claimed in consequence of the same having
claimed within three months been paid through inadvertence, error or
misconstruction, shall be returned, unless

such claim is made within three months from the date of such
payment.

41. The Customs-collector may, if he thinks fit, instead of

Power to give credit for, and requiring payment of customs-duties and
keep account current of, duties charges due from any mercantile firm or
and charges public body, at the time such duties and
charges are payable under this Act, keep

with such firm or body an account-current of such duties and charges
Such account shall be settled at intervals not exceeding one month,
and such firm or body shall make a deposit or furnish security suffi-
cient in the opinion of the Customs-collector to cover the amount
which may at any time be due from them in respect of such duties
and charges

CHAPTER VI

DRAWBACK

42 When any goods capable of being easily identified, which

Drawback allowable on re have been imported by sea into any
export customs-port from any foreign port, and

upon which duties of customs have been
paid on importation, are re-exported by sea from such customs-port
to any foreign port, or as provisions or stores for use on board a ship
proceeding to a foreign port, seven-eighths "or in the case of silver
bullion the whole"† of such duties shall, except as otherwise herein-
after provided, be repaid as drawback,

Provided that, in every such case, the goods be identified to the
satisfaction of the Customs-collector at

Conditions for grant of draw such customs-port, and that the re-export
back be made within two years from the date of

importation, as shown by the records of the custom-house, or with-
in such extended term as the Chief Customs-authority [or the Chief

* As to the application of s 39 to certain duties deemed to be "short levied" within
the meaning of the section, see Act 4 of 1916 s 1 (2) and Act 6 of 1917, s 1 (2)

† Inserted by Act 15 of 1930

Customs officer]* on sufficient cause being shown, in any case determines

*[Provided further that the Chief Customs-officer shall not extend the term to a period exceeding three years]

43 When any goods, having been charged with import-duty at one customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port

Drawback on goods exported to customs port and thence to foreign port

Provided that in every such case, the goods be identified to the satisfaction of the officer in-charge of the customs-house at the port of final exportation and that such final exportation be made within three years from the date on which they were first imported into British India

Proviso

†***43A** (1) Notwithstanding anything hereinbefore contained the repayment of duty as drawback in respect of goods which have been taken into use between importation and re-exportation shall be subject to the provisions of the rules made under sub-section (2)

Drawbacks on goods taken into use between importation and re-exportation

(2) The [Central Government]† may, subject to the condition of previous application, from time to time by notification in the [official Gazette]§ make rules, in respect of goods which have been taken into use between importation and re-exportation—

(a) modifying the amount of duty which shall be repaid as drawback on any such goods or class of such goods or

(b) prohibiting the repayment of duty as drawback on any such goods or class of goods, or

(c) varying the conditions for the grant of drawback on any such goods or class of such goods by restricting the period after importation within which the goods must be re-exported

44 A drawback of the whole of the customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless been warehoused without payment of duty

Drawback of duties on wine and spirit allowed for officers of Navy

such wine and spirit have on the first entry thereof

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively, that is to say—

* These words were inserted by Schedule Part I of the Decentralization Act, 1914 (4 of 1914)

†
:
1937
§
1937

	Gallons
For every Admiral	1 200
Vice Admiral	1 050
Rear Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer Marine officer	
Master Purser or Surgeon	105

- 45 Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended and of the ship in which he serves as well as the place and date of the

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same

last supply for which drawback was allowed

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment to be shipped under their care, and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment the drawback shall be paid to the person entitled to receive the same

- 46 The Customs collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same or of any other such vessel as part of his authorised quantity,

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same Naval officer

or the re-landing and warehousing of any such wine or spirit for future re shipment

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption

- 47 Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty,

and where duties have been paid on any such provisions or stores required for shipment drawback of such duties, whether of customs or excise shall be allowed on receipt of application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorised to make such application

- 48 The provisions of sections 44 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Navy * on board of any of the ships of such Indian Navy" proceeding to any port out of [India],† and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also provisions and stores for the use of such "Indian Navy"

Indian Marine and Marine survey

* Substituted by Act 35 of 1934

† In Burma for India read Burma vide G. O. B. Order of 1937

49 The [Central Government]* may from time to time, by notification in the [official Gazette],†—

Power to declare what goods are indentifiable, (a) declare what goods shall for this purpose of the Chapter, be deemed to be capable of being easily identified, and

and to prohibit drawback in case of specified foreign port (b) prohibit the payment of drawback upon the re exportation of goods ‡[or any specified goods or class of goods] to any specified foreign port §

When no drawback allowed **50** Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

(a) upon goods not included in the export manifest, or

(b) where the goods to be exported are of less value than the amount of drawback claimed, or

(c) where the claim is for drawback amounting in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(d) on salt, salted fish or opium

51 No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export

Time to claim drawback

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment

When payment made

52 Every person, or his duly authorised agent, claiming drawback on any goods duly exported shall make and subscribe a declaration that such goods have been actually exported, and have not been re-landed and are not intended to be re-landed at any customs-port, and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon

Declaration by parties claiming drawback

CHAPTER VII

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards

53 The ‡[Chief Customs-authority] may, by notification in the official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to

Power to fix place beyond which inward bound vessels are not to proceed until manifest delivered

1937

↑

1937

↑

1914)

§ The words 'in India' were repealed by s 4 of *ibid*

‡ Substituted by Act IV of 1914

* Certain words after this repealed by Act IV of 1921 have been omitted

the pilot, officer of Customs or other person duly authorised to receive the same

If, in any river or port wherein a place has been fixed by the *^[Chief Customs-authority] under this section, the master of any vessel arriving remains outside or below the place so fixed, such master, shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorised to receive the same

54 If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot officer of Customs or other person authorised to receive the same

55 Every manifest shall be signed by the master, and shall specify all goods imported in such vessel showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ship's stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the *^[Chief Customs-officer] may from time to time direct

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest, and may, if he thinks fit, levy thereon such fee as the *^[Chief Customs-officer] from time to time directs

Except as herein provided, no import-manifest shall be amended

56 The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the *^[Chief Customs-officer] from time to time directs in this behalf

57. No vessel arriving in any customs port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs collector, and an order has been given thereon for such entry

58 The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cockpit or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

59. Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass permitting bulk to be broken.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

60 Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master

Entry outwards, Port-clearance and Departure of Vessels

61. No vessel shall take on board any part of her export cargo, until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped.

62 No vessel, whether laden or in ballast, shall depart from any customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorised to grant the same

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance.

63. Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel

The master shall at the time of applying for port-clearance—

(a) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the [Chief Customs-officer], signed by such master, specifying all goods to be exported in the vessel and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped :

(b) deliver to the Customs-collector such shipping-bills or other documents as such collector may require for the general instructions of such

(c) answer to such questions touching the departure and destination of the vessel as are asked of him

The provisions of section 55 relating to the amendment of import manifests shall, *mutatis mutandis*, apply also to export-manifest delivered under this section

Power to refuse port clearance

64. The Customs-collector may refuse port-clearance to any vessel until—

(a) the provisions of section 53 are complied with ,

(b) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate as such Customs-collector directs ,

(c) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No 17, and furnishes security for the discharge of the same ,

(d) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the master under section 167, No 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration

65 When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs

66 Notwithstanding anything contained in sections 64 and 65, the Customs collector may (subject to such rules as the Chief Customs-authority may from time to time prescribe) grant a port clearance to the master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering within five days from the date of such grant, the manifest and other documents specified in section 63

Grant of port clearance on security of ship's agent

CHAPTER VIII

GENERAL PROVISIONS AFFECTING VESSELS IN PORT

67 The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port

Power to depute Customs officer to board ships

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs collector otherwise orders

Duty of such officer.

68 Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board

69 Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock-up, seal, mark or otherwise secure any goods on board of such vessel

If any box place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search

On production of such order, the officer bearing the same may require that any such box, place or close receptacle be opened in his presence, and, if it be not opened upon his requisition, he may break open the same

70 Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods other than goods not to be shipped discharged or water borne except in presence of officer, shall be shipped or water-borne to any vessel in any Customs-port, except in the presence of an officer of Customs

71 When an officer of Customs is deputed under section 67 to remain on board a vessel, the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs-collector directs, shall be allowed for the discharge of import cargo and the shipment of export cargo on board of such vessel

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred

No charge shall be made for the services of a single officer of Customs for such allowed number of working days or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section the vessel shall be charged with the expense of officer of Customs at a rate not exceeding five rupees per (Sundays and holidays excepted) for such excess period

In calculating any period allowed or any charge made under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted

73 Except with the written permission of the Customs collector, no goods, other than passengers' baggage, shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

Goods not to be landed etc, on Sundays or holidays without permission nor except within fixed hours

(a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo as the case may be, is prohibited by the Chief Customs authority,

(b) on any day, except between such hours as such authority from time to time appoints by notification in the official Gazette

73 No goods shall in any Customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

Goods not to be shipped etc except at wharves

unless with the written permission of the Customs collector, or when a general permission has been granted under section 74 no goods shall in any Customs port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose

74 Notwithstanding anything contained in section 70 or 73 the Chief Customs-authority may, by notification in the * official Gazette, give general permission for goods to be shipped or water borne to be shipped in any customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs

Power to exempt from sections 70 and 73

75 The Chief Customs-authority may from time to time make rules for the landing and shipping of passengers' baggage and the passing of the same through the custom-house and for the landing shipping and clearing of parcels forwarded by Her Majesty's or other mails or by other regular packets and passenger-vessels

Power to make rules regarding baggage and mails

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed a fee of such amount as the †[Chief Customs-authority] from time to time directs shall be chargeable thereon as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house

Landing fees

76 When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption or of being

Boat note

* Certain word after this repealed by Act IV of 1921, has been omitted

† Substituted by Act IV of 1914

shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorised to receive the same

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the Master of the vessel, or to an officer of the vessel appointed by him to receive it

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, Master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the *[Chief Customs-officer] may from time to time direct

The *[Chief Customs-authority] may from time to time, by notification in the † official Gazette, suspend the operation of his section in any customs port or part thereof

Goods water borne to be forth
with landed or shipped

77 All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay

78 Except in cases of imminent danger no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs

Such goods not to be transhipped
without permission

79 The *[Chief Customs-authority] may declare with regard to any Customs-port, by notification in the † official Gazette that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandise within the limits of such port

Power to prohibit plying of un
licensed cargo boats

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the *[Chief Customs-authority] appoints in this behalf, may, subject to such rules, and on payment of fees as the [Chief Customs-authority]* from time to time prescribes by notification in the † official Gazette, issue licences for and register cargo-boats Such officer may also, subject to rules so prescribed, cancel any licence so issued

Issue of licences and registra
tion of cargo boats

* Substituted by Act IV of 1914

† Certain word after

called by Act IV of 1914, has been omitted

- 80** The Customs collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement

Power to require goods to be weighed or measured on board before landing or after shipment

CHAPTER IX

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS

- 81** When an order for entry inwards of any vessel which has arrived in any customs port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with

Discharge of cargo may commence on receipt of due permission.

- 82** Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55

Goods not to leave ship unless entered in manifest

- 83** If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period as is specified in the bill of lading of such goods, or if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the *[Chief Customs authority] from time to time appoints by notification in the official Gazette, or

Procedure in respect of goods not landed within time allowed

if the cargo of any vessel with the exception of only a small quantity of goods has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the Master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom house, there to remain for entry

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods,

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, *primage* general average, or other charges of a stated amount, the Customs collector shall hold such goods until he receives notice in writing that the said charges are paid

- 84** At any time after the arrival of any vessel, the Customs collector may, with the consent of the master of such vessel cause any small package or parcel or goods to be carried to the custom house, there to remain for entry in charge of the officers of Customs during the remainder of the working days allowed under this Act for the landing of such package or parcel

Power to land small parcels

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any customs-port to which the [Chief Customs-authority]* by notification in the† official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

(a) at the custom-house or any specified landing place or wharf; or

(b) at any landing place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

cargo or portion shall be bound or short delivery which may be the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (a) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing-place or wharf any goods are discharged under clause (b) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-collector* a bill of entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the [Chief Customs-officer]*

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home-consumption, or warehouse them, subject to the provisions hereinafter contained.

* Substituted by Act IV of 1911.

† Certain word after this, repealed by Act IV of 1911, has been omitted.

88 If any goods are not entered and cleared for home-consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the [local official Gazette]* be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector, subject to such charges under notice given under section 83, 84 or 85; next to the payment of the duties which would be leviable on such goods if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs collector in respect of the same

The surplus, if any, shall be paid to the owner of the goods, on his application for the same provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner.

"Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner, as the Chief Customs-authority may, with the concurrence of the [Central Government]† direct."

Provided also that nothing in this section shall authorise the removal for home-consumption of any dutiable goods without payment of duties of Customs thereon

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME CONSUMPTION

89 When the owner of any goods entered for home-consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same, and such order shall be sufficient authority for the removal of such goods by the owner

CHAPTER XI.

WAREHOUSING

Of the Admission of Goods into a Warehouse

90 When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for

* In British India the words within brackets will remain unmodified, vide G I Order of 1937.
† "Gazette," vide G B Order of 1937.
have been substituted by G I Order of 1937.
"Governor," vide G B Order of 1937.

leave to deposit the same in any warehouse appointed or licensed under this Act

91 Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs authority.

Form of application

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,—

Warehousing bond

(a) to observe all rules prescribed by this Act in respect of such goods,

(b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate not exceeding six per cent per annum as is for the time being fixed by the Chief Customs-authority, and

(c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

Form of bond

and shall relate to the cargo or portion of the cargo of one vessel only

93 When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited

Forwarding of goods to warehouse

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited

94 On receipt of the goods, the pass shall be examined by the warehouse keeper, and shall be returned to the Customs-collector

Receipt of goods at warehouse

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bears the marks and numbers specified in, and otherwise corresponds with the pass for its admission

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper to the Customs-collector, and the warehouse-keeper in charge of an warehouse pending such orders as the warehouse-keeper deems most convenient

If the quantity or value of any goods has been erroneously in the bill of entry, the error may be rectified at any time before warehousing of the goods is completed, and not subsequently.

95 Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported.

96 Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse keeper, [or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association]* shall deliver a warrant signed by him as such to the person lodging the goods

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement, and the endorsee shall be entitled to receive the goods specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The †[Chief Customs-authority] may, by notification in the †official Gazette, exempt salt and salted-fish from the operation of this section, and may in like manner cancel such exemption

Rules relating to goods in a Warehouse

97. The Customs collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

98 The Customs collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined, and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit

When any goods have been so sealed and marked after examination, they shall not be again opened
Customs collector, and when any such
such permission, the packages shall, if he
marked as before

99 Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance

* In Burma the words within brackets have been omitted by G. B. Order of 1937

† Substituted by Act IV of 1914

‡ Certain word after this, repealed by Act IV of 1921, has been omitted

100 With the sanction of the Customs collector, and after such notice given, and under such rules and conditions as the Chief Customs authority from time to time prescribes any owner of goods may, either before or after warehousing the same,—

(a) sort, separate, pack and re pack the goods and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be re packed in the packages in which they were imported, or in such other packages as the Customs collector permits) ,

(b) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse ,

(c) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import brands unless the whole of the wine or spirit so mixed be of the same brand ,

(d) bottle off wine or spirit from any casks ,

(e) take such samples of goods as may be allowed by the Customs collector with or without entry for home consumption, and with or without payment of duty except such as may eventually become payable on a deficiency of the original quantity

After any such goods have been so separated and re packed in proper or approved packages, the Customs collector may, at the request of the owner of such goods, cause or permit any refused, *damaged or surplus goods remaining after such separation or re packing* (or, at the like request, any goods which may not be worth the duty) to be destroyed and may remit the duty payable thereon

101 If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bail or written demand for the same from the Customs-collector or other officer deputed by him in that behalf rent and warehouse dues at such rates as the * [Chief Customs officer] may fix

A table of the rates of rent and warehouse dues so fixed shall be placed in a conspicuous part of such warehouse

If any bill for rent or warehouse dues presented under this section is not discharged within ten days from the date of presentation the Customs collector may in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction after due notice in the local official Gazette, such sufficient portion of the goods as he may select

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period

* These words were substituted for the words Chief Customs authority or of Customs as such authority from time to time appoints in this behalf by the Decentralization Act 1914 (4 of 1914)

102 No warehoused goods shall be taken out of any warehouse, except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Goods not to be taken out of warehouse, except as provided by this Act

103. Any goods warehoused may be left in the warehouse, in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided :

Provided that when the licence for any private warehouse is cancelled, and the Customs-collector gives notice of such cancellation to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home-consumption or shipment.

Goods in private warehouse on cancellation of licence

Of the Removal of Goods from one Warehouse to another.

104 Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

Power to remove goods from one warehouse to another in same port

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the *[Chief Customs-officer] from time to time prescribes.

105 Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

Power to remove goods from one port to another

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-Officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form as the *[Chief Customs-officer] from time to time prescribes.

Procedure

106 When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination :

Transmission of account of goods to officers at port of destination

and the person requiring the removal shall before such removal enter into a bond with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time as the *[Chief Customs officer] directs

Such bond may be taken by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner

If such bond is taken at the port of destination a certificate thereof signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal, and such bond shall not be discharged unless such goods are produced to the proper officer and duly re-warehoused at the port of destination within the time allowed for such removal or are otherwise accounted for to the satisfaction of such officer nor until the full duty due upon any deficiency of such goods not so accounted for, has been paid

107 The *[Chief Customs officer] may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount and under such conditions as the *[Chief Customs officer] approves, for the removal from time to time, of any goods from one warehouse to another, either in the same or in a different port and for the due arrival and re-warehousing of such goods at the port of destination within such time as such *[officer] directs

108 Upon the arrival of warehoused goods at the port of destination they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof and under the laws and rules in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods

109 Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port

Clearance for Home consumption or Shipment

110 Any owner of goods warehoused may at any time within three years from the date of the bond executed under section 92 in respect of such goods clear such goods for consumption by paying (a) the duty assessed on such goods section 87, or where the duty on such goods is altered provisions hereinafter contained such altered duty and (

penalties, interest and other charges payable to the Customs-collector in respect of such goods

111 Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same.

Provided that the [Central Government]* may prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transshipment has been prohibited under section 49 or 134 respectively

112 Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port

113 Application to clear goods from any warehouse for home-consumption or for shipment shall be made in such form as the † [Chief Customs-officer] from time to time prescribe

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods

114 If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re assessed for duty according to their actual value and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing

115 If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods, or in the tariff valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with ‡[such alteration]

116 If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home-consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of usage and wastage shall be made in adjusting the duties thereon, as follows (namely) —

* In British India the words within brackets have been substituted by G. O. 1937. In Burma for these words read the word Governor vide G. O. Order of 1937.
† Substituted by Act IV of 1914.
‡ These words were substituted for the words 'the second proviso to s. 87 by s. 21 of the Sea Customs Act (1878) Amendment Act 1880 (8 of 1880)

(a) upon wine, spirit and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be prescribed in this behalf by the * [Chief Customs-authority] and notified in the official Gazette :

For any time not exceeding	6 months,	2½	per cent
For any time exceeding 6 months and not exceeding 12 months,	12 "	5	"
For any time exceeding 12 months and not exceeding 18 months,	18 "	7½	"
For any time exceeding 18 months and not exceeding 2 years,	2 years,	10	"
For any time exceeding 2 years,	3 "	12	"

(b) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties :

(c) in the case of salt warehoused in a private warehouse,† wastage shall be allowed at such rate as may be prescribed from time to time by the * [Chief Customs-authority] and notified in the† official Gazette.

117. When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the* [Chief Customs-officer] may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116

Of the Forfeiture and Discharge of the Bond.

118. If any warehoused goods are removed from the warehouse in contravention of section 102 ; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse ; or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption or shipment or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122 or are not accounted for to the satisfaction of the Customs-collector ; or

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as thinks fit of the goods (if any) in the warehouse on account of w

* Substituted by Act IV of 1914.

† Certain words after this, repealed by Act IV of 1921, have been omitted.

the amount is due, to be detained with a view to the recovery of the demand,

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner) the goods so detained may be sold by public auction duly advertised in the [official Gazette] *

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods. Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making

of the goods shall prevent the Customs
against such goods in the manner above
provided, for any amount due thereon

120 When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause
Noting removal of goods the fact to be noted on the back of the bond

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea, or of the bill of entry if removed for home consumption and the amount of duty paid (if any)

121 A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and
Register of bonds entry shall be made in such register of all particulars required by section 120 to be specified

When such register shows that the whole of the goods covered by any bond have been cleared for home-consumption or shipment, or otherwise
Cancellation and return of bonds duly accounted for, and when all amounts due on account of such goods have been paid, the Customs collector shall cancel such bond as discharged in full and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it

Miscellaneous

122 If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are lost or destroyed by unavoidable accident or delay, the †[Chief Customs officer] may
Power to remit duties on warehoused goods lost or destroyed in ‡[his] discretion remit the duties due thereon

Provided that if any such goods be so lost or destroyed in a

* In British India the words within brackets have been substituted by G. I. Ord. of 1937. In Burma for these words read the word "Gazette" vide G. B. Order of 1937.

† Substituted by Act IV of 1914.

‡ This word was substituted for the word "its" by Sch. Pt. I of the Decentralisation Act, 1914 (4 of 1914).

private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction

123 The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the customs-house officer who has assessed such goods, allowance being made, if necessary for ullage and wastage as provided in section 116 and 117

Provided that no owner of goods shall be entitled to claim from the Customs collector, or from any keeper of a public warehouse compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs

124 Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs

125 The * [Chief Customs-officer] may from time to time determine in what division of any public warehouse, and in what manner, and on what terms any goods may be deposited, and what sort of goods may be deposited in any such warehouse

126 The expenses of carriage packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper be chargeable on the goods and be defrayed by, and recoverable from the owner, in the manner provided in section 119

[**127** All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods]†

CHAPTER XII TRANSHIPMENT

128 In the Ports of [Calcutta Madras, Bombay, Karwar, Karachi† Chittagong and such other Ports as the § [Chief Customs authority] may from time to time by notification in the]

Power to permit transhipment without payment of duty

§ These words were substituted by Act 4 of 1924

† Certain word after this repealed by Act IV of 1924, has been omitted

official Gazette direct in this behalf, the Customs-collector may, on application by the owner of any goods imported into such port, and especially and distinctly manifested at the time of importation as for transhipment to some other Customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination

In any customs-port other than a port in which the preceding clause may from the time being be in force, the Customs collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port. Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs collector directs

Superintendence of transhipment

129 An Officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped

goods from vessel to vessel

130 The powers conferred on the Customs-collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such rules as may from time to time be made by the*

Subsidiary rules as to transhipment,

[Chief Customs authority]

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the * [Chief Customs authority] may in each case appoint in this behalf.

131 All goods transhipped under the second clause of section 128 for removal to a customs port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods

132 If two or more vessels belonging wholly or in part to the same owner, be transhipped from one such vessel to another such vessel without payment of import-duty

Transhipment of provisions and stores from one vessel to another of same owner without any payment of duty

Sam
Sam
Or C
at

other such vessel without payment of import-duty

133 A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as [the Chief Customs authority]† may from time to time, by notification in the‡ official Gazette prescribed for each port

* These words were substituted by Act 4 of 1914

† Substituted by Act 15 of 1914

‡ Certain word after this was omitted by Act 4 of 1921

134. The [Central Government]* may from time to time, by notification in the [official Gazette],† prohibit, at any specified port, or at all ports, the transshipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transshipping any specified class of goods

Power to prohibit transhipment,
No goods to be transhipped except as provided

135 Except as provided in this Act, no goods shall be transhipped at any port or place in British India

CHAPTER XIII

EXPORTATION OR SHIPMENT AND RE-LANDING

136 Except with the written permission of the Customs collector, no goods other than passengers' baggage, or ballast, urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs port until an order has been obtained under section 61 for entry outwards of such vessel

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained

137 †

Clearance for shipment

no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until—

(a) the owner has delivered to the Customs-collector, or other proper officer, a shipping-bill of such goods in duplicate in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the [Chief Customs officer]§ ,

(b) such owner has paid the duties (if any) payable on such goods†, and

(c) such bill has been passed by the Customs-collector

[Provided that the Chief Customs officer may, in the case of any customs-port or wharf, by notification in the local official Gazette, and subject to such restrictions and conditions, if any, as he thinks fit, exempt goods or any specified goods or class of goods or any specified person or class of persons, from all or any of the provision of this section]||

138 Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of customs duties, on exportation or goods exportable only under particular rules or

* In 1937
† In 1937
§ The words, unless the Chief Customs-officer shall in the case of any customs port

restrictions, are permitted to be exported, the owner shall, if required so to do give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-collector directs, with one sufficient surety, that such goods shall be duly shipped exported and landed at the place for which they are entered outwards or shall be otherwise accounted for to the satisfaction of such officer

139 When goods are cleared for shipment on a shipping bill presented after port-clearance has been granted, the Customs collector may, if he thinks fit levy in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

Additional charge on goods cleared for shipment after port clearance granted

(a) in the case of goods liable to duties on fixed tariff valuations, one per cent on the tariff value

(b) in the case of all other goods, one per cent on the market-value

Nothing in this section shall apply to any shipment of treasure or opium

140 If any goods mentioned in a shipping bill or manifest be not shipped or be shipped and afterwards re landed the owner shall before the expiration of five clear working days after the vessel on which such goods were intended to be shipped or from which they were re landed, has left the port, give information of such short shipment or re-landing to the Customs-collector

Notice of non shipment or re-landing and return of duty thereon

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid Provided that no such refund shall be allowed unless information has been given as above required

141 If after having cleared from any customs-port, any vessel without having discharged her cargo returns to such port, or puts into any other customs port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export may, with the consent of the master, apply to the Customs-collector in that behalf

Goods re landed or transhipped from a vessel returning to port or putting into another port

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re landing or transshipment

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export unless they are lodged and remain until the time of re export under the custody of an officer of Customs in a place appointed by the Customs collector or re transhipped under such custody

All expenses attending such custody shall be borne by the owner

142 In either of the cases mentioned in section 141 the master of the vessel may enter such vessel inwards, and any owner of goods therein may with the consent of the master, land the same under the rules herein contained for the importation of goods

Vessel returning to port may enter and land goods under import rules

In every such case, any export duty levied shall be refunded to and any amount paid in drawback shall be recovered from such owner

143 The Customs collector may on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

Landing of cargo during repairs

All expenses attending such custody shall be borne by the master

CHAPTER XIV

SPIRIT

Exportation of Spirit under bond for Excise-duty

144 The Chief Customs-authority may from time to time make rules prescribing the conditions on which spirit manufactured in [British India]* may be removed from any licensed distillery for exportation without payment of excise-duty

Rules for removal of spirit from distillery without payment of duty for exportation

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes conditioned that such duty shall be paid on all such spirit as is—

(a) not exported within four months from the date of the bond or

(b) exported to a customs port, unless [either]† the payment of excise duty as provided by this Chapter in respect thereof at the port of destination or the delivery of the spirit into a warehouse appointed in this behalf by the [Chief Customs authority]‡ having authority at that port is within six months from the date of the bond proved to the satisfaction of the proper officer

The Chief Officer of Customs of the port of exportation may on sufficient cause shown extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, or for the production of such proof that duty has been [so paid or the spirit so delivered]§

* In Burma read British Burma vide G. B. Order of 1937

† This word was inserted by s. 1 (1) of the Sea Customs Act (1875) Amendment Act 1887 (2 of 1887)

‡ Substituted by Act IV of 1911

§ These words were substituted for the word paid by s. 1 (2) of the Sea Customs Act (1875) Amendment Act 1887 (2 of 1887)

145 Spirit intended for exportation under bond for the excise duty shall, * [except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse,] be taken from the distillery direct to the custom-house, under passes to be granted for that purpose by the officers of Excise,

146 Spirit brought to the custom-house for exportation under bond for the excise duty [may,]† previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond [may]† be determined in the same manner

147 Excise-duty shall be recoverable previous to shipment upon the excess (if any), of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the [Chief Customs authority]‡ and notified in the§ official Gazette

148 [Notwithstanding anything in the Indian Tariff Act, 1882¶],|| spirit exported under bond for excise duty from any customs port to any other customs port shall be charged at the port of importation with excise duty at the ordinary rate to which the spirit of the like kind and strength is liable at such port

** Provided that the [Chief Customs authority]‡ may authorise the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the [Chief Customs authority]‡ in this behalf and the excise duty thereon is to be paid on the removal of the spirit from a warehouse so appointed

149 Spirit brought to the a custom house [or to a warehouse licensed under any enactment for the time being in force]†† for exportation under bond for the excise duty may, on payment of such duty be removed for local consumption under passes to be granted for that purpose by the officers of Excise. Credit for every such payment shall be given in discharge of the bond to which it relates

* These words were inserted by the Excise and Sea Customs Law Amendment Act 1885 (9 of 1885)

† The word may was substituted for the word shall by s 2 of the Sea Customs Act (1878) Amendment Act 1887 (2 of 1887)

‡ Substituted by Act IV of 1914

§ Certain word after this repealed by Act IV of 1921 has been omitted

¶ These words were prefixed by s 3 (1) of the Sea Customs Act (1878) Amendment Act 1887 (2 of 1887)

|| Of 1892 See now the Indian Tariff Act 1891 (8 of 1891)

** This proviso was added by Act 2 of 1887 s 3 (2)

†† These words were inserted by s 5 (2) of the Excise and Sea Customs Law Amendment Act, 1885 (9 of 1885)

Drawback of Excise-duty on Export of Spirit

150 * A drawback of excise-duty paid on spirit manufactured in British India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom house be accompanied by a pass in which such payment is certified

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs

Miscellaneous

151 [Notwithstanding anything in the "Indian Tariff Act, 1882†"]‡ if spirit manufactured in [British India]§ upon which excise-duty has been paid is exported from one customs port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon at such rate as the Local Government at such port may, by notification in the local official Gazette, from time to time prescribe

Provided that the [Chief Customs authority]|| may authorise the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the [Chief Customs-authority]|| in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed ¶

152 Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer

Provisions respecting spirit applied to such liquors The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor

153 No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo

* As to the application of the provisions of s 150 to malt liquor see s 9 of the Excise (Malt Liquors) Act 1890 (13 of 1890)

† N I of 1882 See now the Indian Tariff Act 1891 (8 of 1891)

‡ These words were prefixed by s 4 (1) of the Sea Customs Act (1875) Amendment Act 1887 (2 of 1887)

§ In British Burma read British Burma vide G B Order of 1937

|| Substituted by Act 4 of 1914

¶ This provision was added by Act 2 of 1887, s 4 (2)

154 No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force

155 {When by any law for the time being in force, a special duty is imposed on denatured spirit the 'Central Government' * may make rules for ascertaining and determining what spirit imported into British India shall be deemed to be denatured spirit for the purposes of such law, and for causing such spirit to be denatured, if necessary, "by the officers of Government" † at the expense of the person importing the same, before the customs-duties leviable thereon are levied }†

In the absence of any such rules or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption

CHAPTER XV

COASTING TRADE

156 Except as hereinafter provided, nothing in Chapters VII IX X and sections 136 139 and 141 to 143 inclusive, of this Act, shall apply to coasting-vessels or to goods imported or exported in such vessels

Chapters VII, IX, X and part of XIII inapplicable to coasting trade

157 The [Central Government]§ may, from time to time, make rules consistent with the provisions of this Chapter,—

Power to regulate coasting trade

(a) extending any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels,

(b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter,

(c) prescribing the conditions on which goods, or any specified class of goods may be (1) carried in a coasting vessel, whether shipped at a foreign port, or at a Customs port, or at a place declared under section 12 to be a port (2) shipped in a coasting vessel before all durable goods and goods brought in such a vessel from a foreign port have been unladen,

(d) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel

§ In British India the words within brackets have been substituted by G. O. Order of 1937 In Burma for these words read the word "Governor," vide G. O. Order of 1937

158 Before any coasting-vessel departs from the port of lading, ^{than}
Coasting vessels to deliver manifest and obtain port clearance before leaving port of lading ^{master the}
 containing a true specification of all goods to be carried in such vessel, ^{icate,}

in such form, and accompanied by such shipping-bills or other documents, as may from time to time be prescribed by the Chief Customs-authority

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments, and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs authority, a separate port-clearance be prescribed

159 Within twenty four hours after the arrival of any coasting-vessel at any customs port whether ^{intermediate or final, and before any goods}
Delivery of manifest, etc., on arrival ^{are there discharged, the manifest together}
 with the other documents referred to in section 158, shall be delivered to the Customs collector, who shall note on the manifest the date of delivery

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged and subjoin thereto a true specification of all goods shipped at such port

If the customs-port of arrival be an intermediate port and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him relating to such portion, and the Customs collector shall, after verifying such extract, return to him the original manifest, and all documents accompanying it except those relating to such portion

If, in any case the cargo actually on board any coasting vessel on her arrival at any customs port does not, owing to short shipment, re landing or other cause correspond with the specification thereof in the manifest returned to the master under the second clause of section 158 such master shall, before delivery of such manifest under this section note thereon the particulars of the difference

The Customs collector, when satisfied with the manifest and other documents, shall grant an order to break bulk

160 Before any coasting vessel departs from any customs port at ^{which she has touched during her voyage,}
Departure from intermediate port ^{the master shall re-deliver the original}
 manifest to the Customs-collector after ^{indicating thereon the portions (if any) of the cargo therein described}
 which have been discharged, and subjoining thereto a true specification of all goods shipped at such port He shall also deliver a duplicate, signed by him, of the specification so subjoined

If the Customs-collector sees no objection to the departure of

vessel, he shall proceed as prescribed in the second clause of section 158.

161 The Customs collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs collector.

162 When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

(a) If the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods the cargo may be forthwith landed and removed by the owner, without entry thereof at the custom-house and clearance for home-consumption, but subject to such general check and control as the [Chief Customs-officer]* may from time to time by rules prescribe,

(b) if the vessel has so touched at any such port or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported

163 If any of the goods on board of any coasting vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise

164 Notwithstanding anything hereinbefore contained [the Chief Customs-officer may grant or]†

Grant and revocation of Chief Customs-officer may grant or†
general pass "may grant a
[the Chief Customs-officer]*
and for the entry and unloading of any coasting steam vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein

Any such general pass may be revoked by order of [the Chief Customs-officer]* by whom the grant thereof was [made or]† authorised, by notice in writing under the hand of [the Chief Customs-officer]‡ delivered to the master or the owner of such steam vessel or to any of the crew on board

* Substituted by Act IV of 1914

† These words were substituted for the words 'the Chief Customs-officer may' by Schedule Pt I of the Decentralisation Act 1914 (4 of 1914)

‡ These words were inserted by 1917

§ These words were substituted for the words "such authority" by Schedule Pt I of the Decentralisation Act 1914 (4 of 1914)

1 . The Chief Customs-authority may direct that the master of any coasting-vessel which is square rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound

Rules respecting cargo books to be kept by masters of coasting vessels

At every port of lading such master shall enter, or cause to be entered, in such book the name of such port and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein

The Chief Customs authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160

166 Any duly empowered officer of Customs may go on board of any coasting-vessel in any port or place in British India and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading and may demand the production of any document which ought to be on board of any such vessel

The Customs collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection

CHAPTER XVI

OFFENCES AND PENALTIES

167 The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively —

Offences	Section of this Act to which offence has reference	Penalties
1 —Contravening any rule made under this Act	General	Penalty not exceeding five hundred rupees such goods shall be liable to confiscation
2 —If any goods be landed or shipped, or	11	

Offences	Section of this Act to which offence has reference	Penalties
<p>if an attempt be made to land or ship any goods, or</p> <p>if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped,</p> <p>at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods,</p>	General	such person shall be liable to a penalty not exceeding one thousand rupees
<p>3 —If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act, or</p> <p>if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under [No 4]* of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the [shipment and landing]* of goods</p>		
<p>4 —If any vessel which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo</p>		
<p>5 —If any goods are put without the authority of the proper officer of Customs on board of any tug steamer or pilot vessel from any sea going vessel inward bound, or</p> <p>if any goods are put, without such authority, out of any tug steamer or pilot vessel for the purpose of being put on board of any such vessel outward bound, or</p> <p>if any goods on which drawback has been granted are put, without such authority, on board of any tug steamer or pilot vessel for the purpose of being re landed,</p>	11	such vessel shall be liable to confiscation
<p>6 —If any vessel arriving at, or departing from, any customs port fails when so</p>	17	

* The word and figure 'No. 4' were substituted for "No 2" and the words "shipment and landing" were substituted for "landing and shipment," by the Repealing and Amending Act, 1891 (12 of 1891)

Offences	Section of this Act to which offence has reference	Penalties
required under section 17 to bring to at any such station as has been appointed by the [Chief Customs officer]* for the boarding or landing of an officer of Customs		to a penalty not exceeding one thousand rupees
7—If any vessel arriving at any customs port after having come to its proper place of mooring or unloading removes from such place except with the authority of the Conservator obtained in accordance with the provisions of the Indian Ports Act 1875† or other lawful authority to some other place of mooring or unloading or if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the [Chief Customs officer]* under section 17	17	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees and the vessel if not entered shall not be allowed to enter until the penalty is paid
8—If any goods the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act be imported into or exported from British India contrary to such prohibition or restriction or if any attempt be made so to import or export any such goods or if any such goods be found in any package produced to any officer of Customs as containing no such goods or if any such goods or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India or if any goods the exportation of which is prohibited or restricted as aforesaid be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction	18 & 19	such goods shall be liable to confiscation any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees
9—If upon an application to pass any goods through the custom house any person not being the owner of such goods and not having proper and sufficient authority from the owner subscribes or attests any document relating to any goods on behalf of such owner	General	such person shall be liable to a penalty not exceeding one thousand rupees
10—If any goods on the entry of which for re-export drawback has been paid are not duly exported or are unshipped or re-landed at any customs port (not having been duly re-landed or de-	42 & 43	such goods together with any vessel used in so unshipping or re-landed them shall be liable to confiscation

* Substituted by Act IV of 1914

† See now the Indian Ports Act 1908 (XX of 1908)

Offences.	Section of this Act to which offence has reference.	Penalties
charged under the provisions of this Act),		and the master of the vessel from which such goods are so unshipped or re landed, and any person by whom or by whose orders or means such goods are so unshipped or re landed, or who aids, or is concerned in such unshipping or re landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees
11.—If any wine, spirit, provisions or stones be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation
13.—If, in any river or port wherein a place has been fixed under section 53 by the [Chief Customs authority]* any vessel arriving passes beyond such place, before delivery of a manifest to the	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
14.—If place so fixed, wilfully omits, for the space of twenty four hours after anchoring to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees
15.—If, after any vessel arriving has entered any customs port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty four hours after anchoring, to deliver a manifest as required by this Act,	51	such master shall be liable to a penalty not exceeding one thousand rupees
16.—If any manifest delivered under section 53, 54, 60, 63 or 65 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage, or	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees
If any manifest so delivered does not contain a specification true to the best		

Offences	Section of this Act to which offence has reference	Penalties
<p>of such person's knowledge of all goods imported or to be exported in such vessel,</p> <p>17—If any goods entered in the import manifest of a vessel are not found on board of the vessel or if the quantity so found is short and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom house</p>	55 & 64	<p>the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods if they be dutiable and the duty leviable thereon can be ascertained or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article</p> <p>such person shall be liable to a penalty not exceeding five hundred rupees</p>
<p>18—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do or fails to countersign the same or to enter thereon the particulars referred to in section 56</p>	53 51 & 56	<p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees</p>
<p>19—If bulk be broken in any vessel previous to the grant by the Customs collector of an order for entry inwards or a special pass permitting bulk to be broken</p>	57 & 59	<p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees</p>
<p>20—If any bill of lading or any copy thereof</p> <p>fact or</p> <p>if any such bill or copy has been altered with fraudulent intent or</p> <p>if the goods mentioned in any such bill or copy have been <i>bona fide</i> shipped as shown therein or</p> <p>if any such bill of lading or any bill of lading of which a copy is delivered has not been made previously to the departure of the vessel from the place where the goods referred to in such bill of lading were shipped or</p> <p>if any part of the cargo has been staved, destroyed or thrown over board or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs collector</p>	58	<p>the master of the vessel shall be liable to a penalty not exceeding one thousand rupees</p>
<p>21—If any Master of a vessel attempts to depart without a port clearance</p>	60	<p>such master shall be liable to a penalty not exceeding five hundred rupees</p>
<p>22—If any vessel actually departs without a port-clearance</p>	62	<p>the master of such vessel shall be liable to a penalty not exceeding one thousand</p>

Offences	Section of this Act to which offence has reference	Penalties
23 —If any pilot takes charge of any vessel proceeding to sea notwithstanding that the master of such vessel does not produce a port clearance	62	such pilot on conviction before a Magistrate shall be liable to fine not exceeding one thousand rupees.
24 —If any master of a vessel refuses to receive on board an officer of Customs denoted under section 67	63	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board, and the vessel if not entered, shall not be allowed to enter until such penalty is paid
25 —If any master of a vessel refuses to receive on board one servant of such officer or to provide such officer and servant with suitable shelter and accommodation and with a due allowance of fresh water and with the means of cooking on board,	65	such master shall in each such case be liable to a penalty not exceeding five hundred rupees
26 —If any master of a vessel refuses to allow such vessel or any box place or closed receptacle in such vessel to be searched when so required by an officer of Customs bearing a written order to search or if an officer of Customs places any lock mark or seal upon any goods in a vessel, and such lock mark or seal is wilfully opened altered or broken before due delivery of such goods or if any such goods are secretly conveyed away or if any hatchway or entrance to the hold of a vessel after having been fastened down by an officer of Customs is opened without his permission	69	the master of such vessel shall be liable upon conviction before a Magistrate to a fine not exceeding one thousand rupees
27 —If the master of any vessel laid up by the withdrawal of the officer of Customs shall before application is made by him for an officer of Customs to superintend the receipt of cargo cause or suffer to be put on board of such vessel any goods whatever in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees and the goods if protected by a pass shall be liable to be re-landed for examination at the expense of the vessel and if not protected by a pass shall be liable to confiscation
28 —If any master of a vessel in any case other than that provided for by No 27 causes or suffers any goods to be discharged shipped or water borne contrary to any of the provisions of section 70 72 or 73	70 72 & 73	such master shall be liable to a penalty not exceeding one thousand rupees and all goods so discharged shipped or water borne shall be liable to confiscation

Offences	Section of this Act to which offence has reference	Penalties
<p>29—If, when a boat note is required by section 76 any goods water borne for the purpose of being landed from any vessel, and ware housed or passed for importation or of being shipped for exportation be found without such note, or</p> <p>if any goods are found on board any boat in excess of such boat note whether such goods are intended to be landed from, or to be shipped on board of, any vessel,</p>	76	<p>such goods shall be liable to confiscation and the person by whose authority the goods are being landed or shipped and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods</p>
<p>30—If any person refuses to receive or fails to sign, or to note the prescribed particulars upon any boat note as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorised to make such requisition,</p>	76	<p>such person, master or officer shall be liable to a penalty not exceeding five hundred rupees</p>
<p>31—If any goods are, without permission, shipped or water borne to be shipped or are landed except from or at a wharf or other place duly appointed for the purpose, or</p> <p>if any goods water borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay, or</p> <p>if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping and such deviation be not accounted for to the satisfaction of the Customs collector, or</p> <p>if any goods are transhipped contrary to the provisions of section 78</p>	73	<p>such goods shall be liable to confiscation, and the person by whose authority the goods are shipped,</p>
<p>if any goods water borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay, or</p> <p>if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping and such deviation be not accounted for to the satisfaction of the Customs collector, or</p> <p>if any goods are transhipped contrary to the provisions of section 78</p>	77	<p>landed water borne or transhipped and the person in charge of the vessel employed in conveying them shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on such goods</p>
<p>32—If after the issue of a notification under section 79 with regard to any port any goods are found within the limits of such port on board of any boat not duly licensed and registered,</p>	78	<p>such goods unless they are covered by a special permit from the Customs collector, shall be liable to confiscation and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees</p>
<p>33—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,</p>	55 & 82	<p>such master shall be liable to a penalty not exceeding one thousand rupees</p>
<p>34—If any goods are found concealed in any place box or closed receptacle in any vessel and are not duly accounted for to the satisfaction of the officer in charge of the custom house,</p>	General	<p>such goods shall be liable to confiscation.</p>

Offences	Section of this Act to which offence has reference	Penalties
35 —If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief officer of Customs directs
36 —If, after any goods have been landed and before they have been passed through the custom house the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation, or if the goods cannot be recovered, the owner shall be liable in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article
37 —If it be found, when any goods are entered at, or brought to be passed through, a Custom house, either for importation or exportation, that— (a) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them, or (b) the contents of such packages have been mis stated in regard to sort, quality, quantity or value, or (c) the contents of such packages have been concealed in, or mixed with the articles specified therein, or have apparently been packed so as to deceive the officers of Customs and such circumstance is not accounted for to the satisfaction of the Customs collector,	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees
38 —If when goods are passed by the tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 91	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription unless it be proved to the satisfaction of the

Offences	Section of this Act to which offence has reference	Penalties.
39.—If, without entry duly made, any goods are taken or passed out of any custom house or wharf,	86	officer in charge of the custom-house that the variance was accidental. the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer.	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his licence forthwith cancelled
45.—If the keeper of any public warehouse,	Chap XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery	123	the licensee of such warehouse shall, unless the

Offences	Section of this Act to which offence has reference	Penalties
therefrom to be deficient, and such deficiency is not due solely to ullage or wastage as allowed under sections 116 and 117,		deficiency be accounted for to the satisfaction of the Customs collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient
49 —If the keeper of any public warehouse or the licensee of any private warehouse fails on the requisition of any officer of Customs to produce any goods which have been deposited in such warehouse and which have not been duly cleared and delivered therefrom and is unable to account for such failure to the satisfaction of the Customs collector	123	such keeper or licensee shall for every such failure be liable to pay the duties due on such goods and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient
50 —If any goods after being duly warehoused, are fraudulently concealed in or removed from the warehouse, or abstracted from any package or transferred from one package to another or otherwise for the purpose of illegal removal or concealment	Chap XI	such goods shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees*
51 —If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess unless accounted for to the satisfaction of the officer in charge of the custom house shall be charged with five times the ordinary duty thereon
52 —If any goods be removed from the warehouse in which they were originally deposited except in the presence or with the sanction of the proper officer or under the proper authority for their delivery,	Ditto	such goods shall be liable to confiscation and any person so removing them shall be liable to a penalty not exceeding one thousand rupees
53 —If any person illegally takes any goods out of any warehouse without payment of duty, or aids assists or is concerned therein	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees
54 —If any person contravenes any rule regarding the process of transshipment made by the [Chief Customs Authority]*, or any prohibition or order relating to transshipment notified by the [Central Government]† or transships goods not allowed to be transhipped	130 131	such person shall be liable to a penalty not exceeding one thousand rupees and any goods in respect of which such offence has been committed shall be liable to confiscation

* Substituted by act IV of 1914

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word 'Governor,' vide G. B. Order of 1937

Offences	Section of this Act to which offence has reference	Penalties
5 —If any goods be taken on board of any vessel at any customs port in contravention of section 136	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
56 —If any goods not specified in a duly passed shipping bill are taken on board of any vessel contrary to the provisions of section 137	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods
57 —If any goods specified in the manifest of any vessel or in any shipping bill are not duly shipped before the departure of such vessel or are re landed and notice of such short shipment or re landing be not given as required by section 140	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees and such goods shall be liable to confiscation
58 —If any goods duly shipped on board of any vessel be landed except under section 141 142 or 143 at any place other than that for which they have been cleared	141	the master of such vessel shall unless the landing be accounted for to the satisfaction of the Customs collector be liable to a penalty not exceeding three times the value of such goods so landed
59 —If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142	*[142]	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods unless the fact be accounted for to the satisfaction of the Customs collector
60 —If any person without a special pass from an Officer of Excise at the place of exportation re lands or attempts to re land any spirit shipped for exportation	154	such person shall be liable to a penalty not exceeding five hundred rupees
61 —If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees and all such spirit shall be liable to confiscation
62 —If in contravention of any rules made under section 157 any goods are taken into, or put out of or carried in any coasting vessel or if any such rules be otherwise infringed	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees
63 —If contrary to any such rules any coasting vessel touches at any foreign port or deviates from her voyage unless forced by unavoidable circumstances or if the master of any such vessel which has	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees and if any goods liable to export duty have

* These figures were substituted for the figures 141 by the Repealing and Amending Act 1891 (12 of 1891)

Offences.	Section of this Act to which offence has reference	Penalties
touched at a foreign port fails to declare the same in writing to the Customs collector at the customs port at which such vessel afterwards first arrives		been landed from or any goods liable to import duty have been shipped in, such vessel at such foreign port such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at a customs port to or from a foreign port, as the case may be.
61 —If in the case of any coasting vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall, in each such case, be liable to a penalty not exceeding five hundred rupees
65 —If the person executing any bond given under section 161 fails to produce the certificate mentioned in the same section, or to show sufficient reason for its non production	161	such person shall be bound to pay a penalty equal to double the amount of customs duties which would have been chargeable on the export cargo of the vessel had she been declared to be bound to a foreign port
66 —If the master of any coasting vessel violates any of the conditions under which a general pass for such vessel has been granted	161	such master shall be liable to a penalty not exceeding one thousand rupees
67 —If any master of a coasting vessel contravenes any of the provisions of section 165	165	such master shall be liable to a penalty not exceeding five hundred rupees
68 —If, upon examination, any package entered in the cargo book required by section 165, is containing dutiable goods, is found not to contain such goods, or if any package is found to contain dutiable goods not entered, or not entered as such in such book,	165	such package, with its contents, shall be liable to confiscation
69 —If the master of any coasting vessel required under section 165 to keep a cargo book fails correctly to keep or to cause to be kept, such book, or to produce the same on demand, or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered or if any goods entered as laden, and not noted as delivered, be not on board	165	such master shall be liable to a penalty not exceeding five hundred rupees

Offences	Section of this Act to which offence has reference	Penalties
<p>70 —If contrary to the provisions of this or any other law for the time being in force relating to the customs any goods are laden on board of any vessel in any Customs port and carried coastwise or</p> <p>if any goods which have been brought coastwise are so unladen in any such port or</p> <p>if any goods are found on board of any coasting vessel without being entered in the manifest or cargo book or both (as the case may be) of such vessel</p>	Chapter XV	<p>such goods shall be liable to confiscation and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees</p>
<p>71 —If the master of any coasting vessel refuses to bring any document to the Customs collector when so required under section 166</p>	166	<p>such master shall be liable to a penalty not exceeding two hundred rupees</p>
<p>72 —If any person makes or signs or uses any declaration or document used in the transaction of any business relating to the Customs knowing such declaration or document to be false in any particular or counterfeits, falsifies or fraudulently alters or destroys any such document or any seal signature initials or other mark made or impressed by any officer of customs in the transaction of any business relating to the Customs or</p> <p>being required under this Act to produce any document refuses or neglects to produce such document or,</p> <p>being required under this Act to answer any question put to him by an officer of Customs does not truly answer such question,</p>	General	<p>such person shall on conviction of any such offence before a Magistrate be liable to a fine not exceeding one thousand rupees</p>
<p>73 —If any person on board of any vessel or boat in any customs port, or who has landed from any such vessel or boat upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession declares that he has not and if any such goods are after such denial found about his person or in his possession</p>	Ditto	<p>such goods shall be liable to confiscation and such person shall be liable to a penalty not exceeding three times the value of such goods</p>
<p>74 —If any officer of Customs requires any person to be searched for dutiable or prohibited goods or to be detained without having reasonable ground to believe that he has such goods about his person or has been guilty of an offence relating to the Customs</p>	169	<p>such officer shall on conviction before a Magistrate be liable to a fine not exceeding five hundred rupees</p>
<p>75 —If any officer of Customs or other person duly employed for the prevention of smuggling is guilty of a wilful breach of the provisions of this Act</p>	General	<p>such officer or person shall on conviction before a Magistrate be liable to simple imprisonment for any term not exceeding two</p>

Offences	Section of this Act to which offence has reference	Penalties
76 —If any officer of Customs or other person duly employed for the prevention of smuggling, practises or attempts to practise, any fraud for the purpose of injuring the customs-revenue or abets or connives at any such fraud or any attempts to practise any such fraud	General	years, or to fine or to both. Ditto
77 —If any Police officer, whose duty it is under section 180, to send a written notice or cause goods to be conveyed to a custom house neglects so to do	180	such officer shall on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees
78 —If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both
79 —If any officer of Customs except in the discharge in good faith of his duty as such officer discloses any particulars learned by him in his official capacity in respect to any goods or shows any samples delivered to him in such capacity, or if any officer of Customs except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees
80 —If any person without the approval of the Customs collector under section 202 acts as an agent for the transaction of business as therein mentioned	202	such person shall be liable to a penalty, not exceeding five hundred rupees

Nothing in the second column of the above schedule shall be deemed to have the force of law

Notes —The use of the expression 'offence' and 'penalty' in respect of the acts and omission specified in s 167 is not by itself sufficient to show that such acts or omissions are declared as crimes. A I R 1926 Sind 40—20 S L R 100=88 Ind Cas 980 No appeal lies to High Court from decisions of Customs authorities. High Court can only interfere if principles of natural justice have not been carried out. A I R 1929 Bom 462 =31 Bom L R 1052=125 Ind Cas 425

168 The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof

Packages and contents included in confiscation of goods

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation

Also conveyances and animals used in removal

Tackle, etc., included in confiscation of vessels

The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

Notes—Section 168 applies to a Muchwa used in the removal of goods loaded under false manifest and carried from one port to another A. I. R. 1929 Bom 462=31 L. R. 1052=125 Ind. Crs 425

CHAPTER XVII *

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC

169 Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel

Power to search on reasonable suspicion

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person

170 When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search before the nearest Magistrate or Customs-collector

Persons may before search require to be taken before Magistrate or Customs collector

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs collector

... the whom any person is ... and for search, forthwith direct that the search be made

A female shall not be searched by any but a female

171 Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling may stop and search for smuggled goods any vessel, cart or other means of conveyance Provided that he has reason to believe that smuggled goods are contained therein

Power to stop vessels carts etc and search for goods on reasonable suspicion

172 Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods

Power to issue search warrants

Such warrant shall be executed in the same way, and shall have the same effect as a search warrant issued under the law relating to Criminal Procedure †

* The powers conferred on officers of Customs under this Chapter may be exercised by them for the prevention of offences under the Indian Immigration Act, 1903 (17 of 1903) see s. 99 of the Act

† See now Act 5 of 1893

173 Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling

Persons reasonably suspected may be arrested

Persons arrested to be taken to nearest Magistrate or Customs collector

174 Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector

175 When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs

Persons taken before Magistrate may be detained or admitted to bail

Provided that any person so arrested committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf

176 If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Person escaping may be afterwards arrested

177 When any person employed on the crew of any of the ships of Her Majesty's Navy, [or His Majesty's Indian Navy]* is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law

Persons in Her Majesty's Navy when arrested to be secured on board until warrant procured

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained

178 Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling

Seizure of things liable to confiscation

179 All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs officer authorised to receive the same

Things seized how dealt with

If there be no such officer at hand, all such things shall be carried to and deposited at the custom house nearest to the place of seizure

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the words 'Indian Marine or Marine Survey'

If there be no custom house within a convenient distance, such things shall be deposited at the nearest place appointed by the [Chief Customs officer]* for the deposit of things so seized

180 When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house, and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at the nearest custom house, to be there proceeded against according to law

181 When any thing is seized or any person is arrested under this Act the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest

181A† (1) The Chief Customs-officer or other officer authorised by the [Provincial Government]‡ in this behalf may detain any package, brought whether by land or sea into [British India]§ which he suspects to contain—

(a) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document, containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code, and shall forward such package to such officer as the [Provincial Government]‡ may appoint in this behalf

(2) Any officer detaining a package under the provisions of subsection (1) shall where practicable forthwith send by post to the addressee or consignee of such package notice of the fact of such detention

(3) The [Provincial Government]‡ shall cause the contents of such package to be examined and if it appears to the [Provincial Government]‡ that the package contains any such newspaper book or other document, containing any such seditious matter, may pass such orders as to the disposal of the package and its contents as it may deem proper and if it does not so appear shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force

Provided that any person interested in any package detained under

* Substituted by Act IV of 1914

the provisions of this section may, within two months from the date of such detention, apply to the [Provincial Government]* for release of the same, and the [Provincial Government]* shall consider such application and pass such orders thereon as it may deem to be proper

Provided, further, that, if such application is rejected the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package of its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation

181B† Every application under the second proviso to sub-section (3) of section 181A shall be heard and determined, in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898,‡ by a special Bench of the High Court constituted in the manner provided by section 99C of that Code

Procedure for disposal by High Court of applications for release of packages so detained

181C § No order passed or action taken under section 181A shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section

182 In every case, except the cases mentioned in section 167, Nos 26, 72 and 74 to 76 both inclusive, in which, under this Act anything is liable to confiscation or to increased rates of duty, or any person is liable to a penalty, such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector,

(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs,

(c) up to confiscation of goods not exceeding fifty rupees in value and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the [Chief Customs authority]¶ may, from time to time, empower in that behalf in virtue of their office

Provided that the [Chief Customs authority]¶ may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clause (a) or (c) of this section

and penalty may be made general principles
les A I R 1922 Bom 30=21 Bom L R

o been substituted by G I Ord r
' vide G B Order of 1937

* A O 1875

§ Section 181C has been added by Act 14 of 1922

¶ Substituted by Act IV of 1914

183 Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit

Option to pay fine in lieu of confiscation

On confiscation, property to vest in Her Majesty

184 When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession

185 If any vessel actually departs without a port clearance, or after failing to bring to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any customs port to which such vessel proceeds, or in which she is *

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified

186 The award of any confiscation penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law

187 All offences against this Act, other than those cognizable under section 182 by officers of Customs may be tried summarily by a Magistrate

188 Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs authority, or, in such cases as [the Central Government]† directs, to any officer of Customs not inferior in rank to a Customs collector and empowered in that behalf by name or in virtue of his office by [the Central Government] †

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming altering or annulling the decision or order appealed against

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final

* Certain words after this repealed by G. I. Order and G. B. Order of 1937 have been omitted

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these read the word Governor, and G. B. Order of

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner

190 If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such Authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

191. [The Central Government]* may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order

192 When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid

193 When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of customs such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs

When an officer of Customs, who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realise the unpaid amount thereof from such goods, such officer may

* In British India the words within brackets have been substituted by G I Ord of 1937 In Burma for these words read the word "Governor," vide G B Ord of 1937

notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself

CHAPTER XVIII

MISCELLANEOUS

Power to open packages and examine goods

194 Any officer of Customs may open any package and examine any goods brought by sea to or shipped or brought

for shipment at any customs port

***195** (1) The Customs collector may, on the entry or clearance of any goods or at any time while such goods are being passed through the custom-house, take samples of such goods for examination or for ascertaining the value thereof on which duties are payable or for any other necessary purpose

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him

(2) In the case of goods which consist of drugs or articles intended for consumption as food and in respect of which the taking of samples for the purposes of this sub section may have been authorised by general or special order of the [Provincial Government]†, the Customs collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs collector *

†**[195A]** (1) When by any law for the time being in force a duty of customs is imposed on mineral oil which is specified as being suitable or is not being suitable for use as an illuminant in wick lamps the Chief Customs authority may make rules for determining in disputed cases whether any mineral oil is or is not suitable for such use

(2) In particular such rules may—
(a) specify the design construction and materials of test lamps to be used for testing the burning properties of mineral oil in wick lamps and provide for the standardisation of such test lamps and
(b) prescribe the manner in which and the persons by whom tests are to be carried out and the standards to be accepted for deciding whether any mineral oil is or is not suitable for use as an illuminant in wick lamps]

* Sect on 195 has been re numbered as 190 (1) and sub sect on (2) has been added by Act 13 of 1919

† In Br t h Ind the words within brackets have been substituted by G I O 193 In Burma for these words read the word Governor vide G E Order of 19

‡ Inserted by Act 28 of 1919

Owner to pay expense incidental to compliance with Customs law.

196 The unshipping, carrying shipping and landing of all goods,

and the bringing of them to the proper place for examination or weighing and the putting of them into and out of the scales, and the opening unpacking, bulking sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods

197 No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

198 No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, or

Limitation after the expiration of three months from the accrual of such cause

199 The [Chief Customs-officer]* may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorised landing-place or part of the custom-house premises, shall be subject to payment of fees, and the amount of such fees

Wharfage fees

200 A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs collector, to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant

201 Except in the cases provided for by sections 36, 55, 63 and 94 the Customs collector may in his discretion upon payment of one rupee, authorise any document, after it has been entered and recorded in the custom house, to be amended

Amendment of documents

202 No person authorised to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage shall so act in any custom-house unless such authorisation is approved by the Customs collector

Such officer may require any person so authorised to give a bond with sufficient security in any sum not exceeding five thousand rupees

* Substituted by Act IV of 1914

for his faithful behaviour as regards the custom-house regulations and officers

Such officer may, in case of misbehaviour of the person so authorised, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final

Every appeal under this section shall be made within one month of the suspension or withdrawal

203 When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person or firm Provided that the Customs-collector may refuse to recognise such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorising such clerk, servant or agent to transact such business on behalf of such person or firm

204 All rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law

* All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price

* **205** Any notification published in the Gazette of India by the Chief Customs authority under section 53, section 74 section 76 section 79, section 85 section 96 section 116 section 128, section 133 or section 147 shall forthwith be re-published [with the consent of the Provincial Government]† in the [official Gazette]‡ of each province to which it relates

206 If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods For any damage so occasioned by such officer, the [Chief Customs-officer or the Customs-collector, with the sanction of the Chief Customs-officer shall]§ make due compensation to such owner

¶ [Provided that compensation exceeding two hundred and fifty

* Inserted by Act IV of 1924 But this section has been omitted in Burma rule G B Order of 1937

† Inserted by G I Order of 1937

‡ Substituted by G I Order of 1937

§ These words were substituted by Schedule, Part I of the Decentralization Act 1914 (4 of 1914)

¶ This proviso was added by Schedule Part I of the Decentralization Act 1914 (4 of 1914)

rupees shall be paid with the sanction of the Chief Customs authority]

207 Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of [Calcutta or the Trustees of the Port of Bombay]* [or any like body hereafter created for any other port] †

Saving of Calcutta Port
Commissioners and Bombay
Port Trust Acts

for making improvements in the Port of
[Calcutta or the Trustees of the Port of
Bombay]* [or any like body hereafter
created for any other port] †

SCHEDULE

PART I

[Repealed by Act I of 1938]

PART II

FORMS

A

FORM OF BOND FOR IMPORT DUTY

(See section 92)

BOND

No 18

We A B

now of
,and C D

General in Council
a)
eral
eral
egal

(Date)

The above bounden

(Signed) ()

having applied to the officer in charge
for and
for a period

and entered
ster of Goods

if the or their legal representatives shall observe
all the rules prescribed in the Sea Customs Act 1878 to be observed by owners of
goods warehoused and by persons obtaining permission to warehouse goods under the
provision thereof

* In Burma for Calcutta or the Trustees of the Port of Bombay substitute
' Rangoon and G B Order of 1937

† Substituted by Act 9 of 1895

‡ In British India the words with n quotations have been substituted by G I Order of
1937 In Burma for these words read the words the Government of Burma rule G B
Order of 1937

And if the said _____ or their legal representatives shall pay to the officer in charge of the custom house at the port of _____ all dues whether customs duties warehouse dues rent or other lawful charge which shall be demandable on the said goods _____

said officer in charge of the custom house

And if within the term so fixed or enlarged the said goods or any portion thereof having been removed from the said warehouse for home consumption or re exportation by sea, the full amount of all customs duties warehouse dues rent and other lawful charges penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods

This obligation shall be void

Otherwise and on breach or failure in the performance of any part of this condition the same shall be in full force

(Date)

(Signed)

()

B

FORM OF BONDED WAREHOUSE WARRANT

(See section 2G)

I do hereby certify that _____ have deposited
in the warehouse of _____ the undermentioned
goods _____ which goods the _____
payment of rent and incidental charge and [Crown dues]* or customs chargeable thereon, _____
to deliver to the said _____ or their assigns or to the holder of
this warrant to whom it may be transferred by endorsement.

C

FORM OF BOND FOR THE REMOVAL OF SPIRIT
FROM A LICENSED DISTILLERY

(See sections 144 and 152)

We are jointly and severally bound to [the Governor of] † in the sum of Government rupees to be paid to [the Governor of] † for which payment we jointly and severally bind ourselves and our legal representatives

Dated this

day of 18

(Signe 1) ()

1937

†

193-

1937

7

1937

rupees shall be paid with the sanction of the Chief Customs authority]

207 Nothing in this Act shall affect any law for the time being in force relating to the Commissioners for making improvements in the Port of [Calcutta or the Trustees of the Port of Bombay]* [or any like body hereafter created for any other port] †

Saving of Calcutta Port Commissioners and Bombay Port Trust Acts

SCHEDULE

PART I

[Repealed by Act I of 1938]

PART II

FORMS

A

FORM OF BOND FOR IMPORT DUTY

(See section 92)

BOND

No 18

We A B

now of

,and C D

of the same place are jointly and severally bound to ' the Governor General in Council (of India) *
ral
ral
gal

representatives

(Date)

(Signed) { }

The above bounden of the Custom house at obtained permission to lodge in the warehouse

having applied to the officer in charge for and for a period

to say and entered ship of the Register of Goods

all the rules prescribed in the Sea Customs Act 1878 to be observed by owners of goods warehoused and by persons obtaining permission to warehouse goods under the provision thereof

* In Burma for Calcutta or the Trustees of the Port of Bombay substitute Rangoon, vide G B Order of 1937

1937
Order

G I Order of
1937, vide G B

And if the said _____ or their legal representatives shall pay to the officer in charge of the custom house at the port of _____ all dues whether customs duties warehouse dues rent or other lawful charge which shall be demandable on the _____.

said officer in charge of the custom house

And if within the term so fixed or enlarged, the said goods or any portion thereof, having been removed from the said warehouse for home consumption or re exportation by sea, the full amount of all customs duties warehouse dues rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods.

This obligation shall be void

Otherwise and on breach or failure in the performance of any part of this condition, the same shall be in full force

(Date)

(Signed) (_____)

B

FORM OF BONDED WAREHOUSE WARRANT

(See section 96)

I do hereby certify that
in the warehouse of _____
good _____
payn _____
to de _____
this _____

_____ have deposited
the undermentioned

C.

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY

(See sections 141 and 152)

We

_____ are jointly and severally bound to [the Governor of] † in the sum of _____ rupees
paid to [the Governor of] † for which payment we jointly and severally bind ourselves
and our legal representatives

Dated this _____ day of _____ 18 _____

(Signed) (_____)

The _____
Governor
of du _____
proof _____

dozen _____
in the annex _____

subject to the _____

* In _____
1937 _____

† In _____
1937 _____

1937 _____

‡ In Burma for the words within brackets read the word ' rupees,' vide G B Order

The condition of this obligation is that if the above bounden or
 their legal representatives shall at the expiration of four calendar months from the date
 of this obligation pay or cause to be paid to [the Governor of]* duty at the rate of
 mentioned
 port subject
 ll be given) or
 and otherwise

Signed in the presence of

Place

Date

*If the bond be for cordials and oil or liquors under section 15^a add—
 Schedule*

Description of cordials and liquors	Quantity in bottles or gallons	Quantity of proof spirit
1	2	3

THE INDIAN SLAVERY ACT, 1843.

CONTENTS

SECTION

- 1 Prohibition of sale of persons or right to his labour on ground of slavery
- 2 Bar to enforcement of rights arising out of alleged property in person as a slave

SECTION

- 3 Bar to dispossession of property on ground of owner's slavery
- 4 Penal offence against alleged slave

THE INDIAN SLAVERY ACT, 1843

(ACT NO V OF 1843)

(Passed on the 7th April 1843)

An Act for declaring and amending the law regarding the condition of Slavery within the territories of the East India Company

- 1 No public officer shall in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery

Notes—This Act has nothing to do with the relation existing between *Nasau* and *Bhuggats* and the services rendered in the performance of rights and ceremonies.—*In re Adiram and Midiram* 3 S D A R 444 See also 3 S D A R 176

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word the Government of Burma rule G I Order of 1937

Act V of 1813 prevents the application of *willa* rule of Mahomedan Law whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator 3 Bom 422=6 I A 137

Bar to enforcement of rights arising out of alleged property in person as a slave

2 No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate

within the territories of the East India Company

3 No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest shall be dispossessed of such property, or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave

4 Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery

Penal offence against alleged slave

THE STAGE-CARRIAGES ACT, 1861.

CONTENTS.

PREAMBLE

SECTION

- 1 Definition of stage carriage
- 2 Carriages to be licensed
- 3 Power to refuse licence
Particulars of licence
- 4 Charge for and duration of licence
- 5 Particulars to be painted on conspicuous part of carriage
- 6 Penalty for letting carriage without having particulars painted
- 7 Penalty for letting for hire unlicensed carriage
- 8 Penalty for allowing carriage to be drawn by fewer animals or more passengers etc to be carried than provided by licence
- 9 Penalty for ill treating animals
- 10 Revocation of licence
- 11 Penalty for not conforming to provisions of section 5
- 12 Penalty for misconduct on part of drivers

SECTION

- 13 Penalty when recoverable from proprietor
Proviso
- 14 Issue of summons
- 15 Adjudication of penalties
- 16 Recovery of penalties etc
- 17 Offender may be apprehended and detained in custody until return of warrant of distress
- 18 Imprisonment of offender if distress not sufficient
- 19 Recovery of penalty and costs from European British subjects
- 20 Jurisdiction
- 20A Power to make rules
- 21 Interpretation clause
Magistrate
Act applicable to all animals used for drawing carriages
- 22 Extent of Act
- 23 Power to Provincial Government to exempt

THE STAGE-CARRIAGES ACT, 1861

(ACT NO XVI OF 1861)

(Received the Governor General's assent on the 7th July 1861)

An Act for licensing and regulating Stage-Carriages

WHEREAS it is expedient to license and to regulate stage-carriages in [British India]* it is enacted
I recamble follows —

* In Burma for British India

British Burma vide G B Order of 1

1. Every carriage drawn by one or more horses which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in [British India]* shall without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act †

2 No carriage shall be used as a stage-carriage unless licensed by a Magistrate [or by the Commissioner of Police of a Presidency-town]‡

3. The Magistrate [or Commissioner of Police]§ to whom the application for a licence of a stage-carriage is made may refuse to license the same if he shall be of opinion that such stage-carriage is unserviceable or is unsafe or unfit for public accommodation or use.

If a Magistrate [or Commissioner of Police]§ as aforesaid shall grant a licence the licence shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed

4 ||[For every such licence there shall be paid by the proprietor of the stage-carriage the sum of five rupees or such less sum as the "Provincial Government" ¶ may fix, and such licence shall be in force for one year from the date thereof.]

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the licence for the name of the former proprietor without any further payment for that year, and every person who appears by the licence to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act

Notes.—For scale of fees fixed by the Chief Commissioner, North Western Frontier Province, vide *Gazette of India*, 1904, Part II, p 354

5 On any stage-carriage being licensed, the proprietor thereof shall cause the number of the licence and all the other particulars of the licence to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage

6 The proprietor of any licensed stage-carriage who shall let such stage carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in

* In Burma for "British India" read "British Burma" vide G. B. Order of 1937

† The proviso to s 1 has been repealed by s 2 of the Stage Carriages Act (1961) and this Act shall stand repealed

of 1937
in Stage-Car

the last preceding section, shall be liable to a fine not exceeding one hundred rupees.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the licence, shall be liable on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage, than shall be provided by the licence, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused or tortured, any horse, employed in drawing or harnessed to any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which from sickness, age, wounds or other cause, is unfit to be driven in such stage-carriage, shall for every such offence, be liable to a fine not exceeding one hundred rupees

10 Any Magistrate [or* Commissioner of Police]† within the local limits of whose jurisdiction any stage carriage shall ply, or who has granted the licence of stage-carriage, may cancel the licence of such stage-carriage if it shall appear to him that such stage-carriage, or any horse or any harness used with such carriage, is unserviceable or unsafe, or otherwise unfit for public accommodation or use

11 In any section or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage carriage with the horse harnessed thereto, if the full particulars of the licence of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act

* The word "Chief" has been omitted by Act X of 1914

† In Burma the words within brackets have been omitted by G. O. Order of 19

Such carriage with the horse harnessed thereto shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer, and, if thereupon any fine is imposed by such Magistrate and such fine is paid, such stage-carriage and horse shall be immediately released, and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof, and if the fine be not sooner paid, they may be sold and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale, and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse, and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided

12 If any driver of any stage-carriage or any person having the care thereof, shall, through intoxication
 Penalty for misconduct on part of drivers neglect, or by wanton or furious driving or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees

13 Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence
 Penalty when recoverable from proprietor against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8 and such driver or owner shall not be known, or being known cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom
 Proviso any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found

14 Whenever any charge is made before any Magistrate of any offence under this Act on which it is
 Issue of summons necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may

transmit such summons by letter-post, which shall be deemed to be good service thereof

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid

15 All penalties incurred under this Act shall be adjudged by a Magistrate [or Commissioner of Police]* as aforesaid and all orders made under this Act by such Magistrate [or Commissioner of Police]* shall be final

16 All penalties imposed under this Act, or any balance of any fine, costs or charges as mentioned in section 11 of this Act, may in case of non-payment or non recovery thereof be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same

17 In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as such shall be appointed for the return of the warrant of distress

18 If upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid or in case it shall appear to the satisfaction of such Magistrate by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may by warrant under his hand commit the offender provided he is not a European British subject, to prison, there to be imprisoned according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees and for any term not exceeding six calendar months in any other case the commitment to be determinable in each of the cases aforesaid on payment of the amount

19 If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted and the amount of penalty and the costs (if any) shall be levied

* In Burma the words with

cts have been omitted by G. B. Order of

in the manner provided for the execution of decrees of the Civil Court

20 On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer

20A.* (1) The [Provincial Government]† may, by notification in the official Gazette, make rules to carry out the purposes and objects of this Act [in the territories under its administration]‡ or any part of the said territories.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms for licences under this Act, the sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked ;

(b) provide for the inspection of stage-carriages, and of the animals employed in drawing them, and

(c) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section, the [Provincial Government]† may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees

21 The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate, §

[All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India]¶¶

22 ** This Act, as amended by subsequent Acts extends to the whole of [British India], †† but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force

23 ** The [Provincial Government]† may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act

as by G. I. Order of
Order of 1937
Order of 1937.
G. I. Order of 1937
(1861) Amendment

vide G. I. Order

THE INDIAN STAMP ACT (II OF 1899)

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62 Penalty for executing etc, instrument not duly stamped	71 Jurisdiction of Magistrates
63 Penalty for failure to cancel adhesive stamp	72 Place of trial
64 Penalty for omission to comply with provisions of section 27	CHAPTER VIII
65 Penalty for refusal to give receipt and for devices to evade duty on receipts	SUPPLEMENTAL PROVISIONS
66 Penalty for not making out policy or making one not duly stamped	73 Books etc to be open to inspection
67 Penalty for not drawing full number of bills or marine policies purporting to be in sets	74 Powers to make rules relating to sale of stamps
68 Penalty for post dating bills, and for other devices to defraud the revenue	75 Power to make rules generally to carry out Act
69 Penalty for breach of rule relating to	76 Publication of rules
	76A Delegation of certain powers
	77 Saving as to Court fees
	78 Act to be translated and sold cheaply
	79 [Repealed]

THE INDIAN STAMP ACT, 1899

ACT NO II OF 1899

(A few extracts)

CHAPTER VII

CRIMINAL OFFENCES AND PROCEDURE

62 (1) Any person—

(a) drawing making issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting paying or receiving payment of, or in any manner negotiating any bill of exchange "payable otherwise than on demand" *† or promissory* note without the same being duly stamped or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped or

(c) voting or attempting to vote under any proxy not duly stamped

shall for every such offence be 'punishable with fine which may extend to five hundred rupees "

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty

* Inserted by Act 5 of 1927

† Certain word after this repealed by Act 5 of 1927, has been omitted

in the manner provided for the execution of decrees of the Civil Court

20 On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer

20A.* (1) The [Provincial Government][†] may, by notification in the official Gazette, make rules to carry out the purposes and objects of this Act [in the territories under its administration][‡] or any part of the said territories

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms for licences under this Act, the sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked,

(b) provide for the inspection of stage-carriages, and of the animals employed in drawing them, and

(c) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section, the [Provincial Government][†] may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees

21 The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate; §

[All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India]||[¶]

22 ** This Act, as amended by subsequent Acts, extends to the whole of [British India] ,^{††} but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force

23 ** The [Provincial Government][†] may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act.

Interpretation clause
'Magistrate'

Extent of Act

Power to Provincial Government to exempt

n substituted by G I Ord of
' vide G B Ord of 1937
ed by G B Order of 1937
omitted by G I Order of 1937

rranges Act (1861) Amendment

114

19, s 5

sh Burma," vide G B Ord

THE INDIAN STAMP ACT (II OF 1899).

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CHAPTER VII	SECTION
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65 Penalty for refusal to give receipt and for devices to evade duty on receipts	SUPPLEMENTAL PROVISIONS
66 Penalty for not making out policy or making one not duly stamped	73 Books etc. to be open to inspection
67 Penalty for not drawing full number of bills or marine policies purporting to be in sets	74 Powers to make rules relating to sale of stamps
68 Penalty for post dating bills, and for other devices to defraud the revenue	75 Power to make rules generally to carry out Act
69 Penalty for breach of rule relating to	76 Publication of rules
	76A Delegation of certain powers
	77 Saving as to Court fees
	78 Act to be translated and sold cheaply
	79 [Repealed]

THE INDIAN STAMP ACT, 1899

ACT NO II OF 1899

(A few extracts)

CHAPTER VII

CRIMINAL OFFENCES AND PROCEDURE

62 (1) Any person—

(a) drawing making issuing, endorsing or transferring or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting paying or receiving payment of, or in any manner negotiating any bill of exchange, 'payable otherwise than on demand *† or promissory* note without the same being duly stamped or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped or

(c) voting or attempting to vote under any proxy not duly stamped

shall for every such offence be "punishable with fine which may extend to five hundred rupees "

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61 the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty

* Inserted by Act 5 of 1927

† Certain word after this repealed by Act 5 of 1927, has been omitted

65 Any person who,—

Penalty for refusal to give receipt, and for devices to evade duty on receipts

(a) being required under section 30 to give a receipt, refuses or neglects to give the same, or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be punishable with fine which may extend to one hundred rupees

Notes —

is not necessary under this section

order a second receipt on demand & conviction
Mere non payment of

66 Any person who—

(a) receives, or takes credit for, any premium of consideration for any contract of insurance, and does not, within one month after receiving or taking credit for such premium or consideration, make out and execute a duly stamped policy of such insurance, or

Penalty for not making out policy or making one not duly stamped

(b) makes executes or delivers out any policy which is not duly stamped or pays or allows in account or agrees to pay or allow in account, any money upon, or in respect of, any such policy

shall be punishable with fine which may extend to two hundred rupees

67 Any person drawing or executing a bill of exchange "payable otherwise than on demand" or a policy of

Penalty for not drawing full number of bills or marine policies purporting to be in sets

marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees

68 Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, or

Penalty for post dating bills and

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any negotiates the same, or

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees

Clause (a) —Accepting is a technical term and does not apply to the mere taking of a promissory note in one's favour from the debtor Presenting like accepting is also a technical term U B R (1892 1896) Vol I, 312 See also U B R (1892 1896) Vol I, 311 Accepting means executing as an acceptor 4 O C 168 The mere receipt of an unstamped document is not an offence U B R 1904, 2nd Qr Stamp I an attested promissory note cannot be considered as a bond U B R (1897 1901) Vol I 380

An
180
the la
the mc
174 Where there is no criminal intent he should not be convicted 2 Pat L 1 623
Granting unstamped receipt is offence 35 Bom L R 981 Genuine doubt as regards stamp duty is ground for reducing fine A I R 1933 Oudh 461 As regards what's receipt vide A I R 1933 Oudh 51 S 62 (b) does not require criminal intention A I R 1934 Nag 261 A I R 1934 All 231 Section 62 does not make criminal the execution of an improperly stamped instrument by a witness but the signing of it by persons other than witnesses The words "signing otherwise than as a witness" must be read together A witness to an instrument does not make, draw or execute it 17 Lah 223=162 Ind Cas 774=38 P L R 558=15 Lah L T 17=A I R 1936 Lah 449 (S B) No fraudulent intention need be proved for a conviction under s 62 13 Lah L T 18

63 Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees

Penalty for failure to cancel adhesive stamp

64 Any person who, with intent to defraud the Government,—

Penalty for omission to comply with provisions of section 27

- (a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or
 - (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or
 - (c) does any other act calculated to deprive the Government of any duty or penalty under this Act,
- shall be punishable with fine which may extend to five thousand rupees

Notes—R purchased certain property for Rs 20 000 paying Rs 1 000 in cash and Rs 19 000 by a deed for advance payment Government he went to d fraud M W N 207 in the matter purchaser and was of another is registra on 10-11 N L

65 Any person who,—

Penalty for refusal to give receipt, and for devices to evade duty on receipts

(a) being required under section 30 to give a receipt, refuses or neglects to give the same, or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered.

shall be punishable with fine which may extend to one hundred rupees

order a second receipt
n demand a conviction
Mere non payment of
45
the
tion
780
give

66 Any person who—

(a) receives, or takes credit for, any premium of consideration for any contract of insurance, and does not within one month after receiving, or taking credit for such premium or consideration, make out and execute a duly stamped policy of such insurance, or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punishable with fine which may extend to two hundred
rupees

67 Any person drawing or executing a bill of exchange "payable

Penalty for not drawing full number of bills or marine policies purporting to be in sets

ing or executing a bill of exchange "payable otherwise than on demand" or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number

of bills or policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

68 Any person who—

(a) with intent to defraud the Government of duty, draws or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, or

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts or receives payment of, such bill or note or in any negotiates the same, or

(c) with the like intent, practises or is concerned in any act, for other devices to defraud the revenue contrivance, or device not specially provided for by this Act or any other law for the time being in force ;

shall be punishable with fine which may extend to one thousand rupee

Notes — *Vide* 1 Weir. 907, 39 Bom L R 1181.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale 69 (a) Any person appointed to sell stamps who disobeys any rule made under section 74, and

(b) any person not so appointed who sells or offers for sale any stamp (other than a one anna or "half an anna" * adhesive stamp), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

70 (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed Institution and conduct of prosecutions shall be instituted without the sanction of the Collector or such other officer as the [Collecting Government]† generally, or the Collector specially, authorises in that behalf

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence

(3) The amount of any such composition shall be recoverable in the manner provided by section 48

Notes — If there is fraud, no action need be taken by the Collector under s 40 before a prosecution is sanctioned under s 70 of the Act U B R (1892 1896), Vol I, 307

71 No Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, Jurisdiction of Magistrates shall try any offence under this Act

72. Every such offence committed in respect of any instrument may be tried in any district or presidency- Place of trial town in which such instrument is found as well as in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure ‡ for the time being in force.

CHAPTER VIII

SUPPLEMENTAL PROVISIONS

73 Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, Books, etc., to be open to inspection.

of 1937 "Act" of 1899 1906, s 3 have been substituted by G O Order "Governor," vide G. B. Order of 1937

shall, at all reasonable times, permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge

Powers to make rules relating to sale of stamps 74 The [Collecting Government]* may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such person

Provided that such rules shall not restrict the sale of one anna "or half an anna † adhesive stamps

75 The [Collecting Government]* may make rules to carry out generally the purposes of this Act, and may, by such rules, prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof

Publication of rules 76 [(1) All rules made under this Act shall be published in the official Gazette]†
(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act

76A § [The Central Government, subject to the provisions of section 124 (1) of the Government of India Act, 1935, and the Provincial Government, may by notification in the official Gazette]‡ delegate—

Delegation of certain power (a) all or any of the powers conferred on it by sections 2 (9), 33 (3) (b), 70 (1), 74 and 78 to the Chief Controlling Revenue-authority, and

(b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45 (1) (2), 56 (1) and 70 (2) to such Subordinate Revenue authority as may be specified in the notification,

77 Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court fees

Saving as to Court fees 78 Every † [Provincial Government]* shall make provision for the sale or translations of this Act in the principal vernacular languages of [the territories administered by it]** at a price

Act to be translated and sold cheaply not exceeding four annas per copy

79 [Repealed by Act X of 1914]

* In British India the words within brackets have been substituted by G I Order of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† The word "and" has been substituted by G I Order of 1906

‡ The word "and" has been substituted by G I Order (1) All rules made under the Act

§ In 1914 the words "and" have been substituted by G I Order words The Governor may by notification

* In Burma for the word Every read the word The vide G B Order of 1937

** In Burma for the words within brackets read the word "Burma," vide Order of 1937

THE STATE PRISONERS ACT (XXXIV OF 1850.)

CONTENTS

SECTION

- 1 Persons to whom warrants of commitment may be addressed and effect of warrant of commitment

SECTION

- 2 Regulation III—extended—[*Repealed*]
3 [*Repealed*]

THE STATE PRISONERS ACT, 1850 (ACT NO XXXIV OF 1850)

(Passed on the 23rd August, 1850)

An Act for the better custody of State Prisoners

Preamble—[*Omitted by G I Order of 1937*]

[1 (1) The warrant of commitment of any State prisoner under the Bengal State Prisoners Regulation, 1818, may, if it is issued by virtue of the powers conferred by that regulation on the Central Government, be directed to the commandant of any fortress or the officer in charge of any jail or place, anywhere in any Governor's Province or Chief Commissioner's Province and may if it is issued by virtue of the powers conferred by that Regulation on Provincial Governments, be directed to the commandant of any fortress or the officer in charge of any jail or place, anywhere within the Province in question, but any such warrant issued under that Regulation, whatever the powers by virtue of which it is issued shall be sufficient authority for the arrest of the State prisoner anywhere in any Governor's Province or Chief Commissioner's Province and for his detention until he can be handed over to the commandant or officer to whom the warrant is directed or dealt with in accordance with sub-section (1) of section five of the State-Prisoners Act, 1858

Provided that a State-prisoner shall not be arrested under a warrant issued by virtue of the powers conferred by the said Regulation on Provincial Governments except with the consent of the Government of the Province in which he is arrested

(2) This section applies throughout British India (including Berar)"]*

2—[*Repealed by G I Order of 1937*]

3—[*Repealed by Act XIII of 1891*]

THE STATE PRISONERS ACT (III OF 1858)

CONTENTS

SECTION

- 1 [*Repealed*]
2 Regulations as to arrest and confinement of State Prisoners in force within Presidency to ens—[*Repealed*]
3 Persons to whom warrant of Commit

SECTION

- ment may be addressed and effect of warrant of Commitment
4 [*Repealed*]
5 Removal of State prisoners from one Province to another province
6 Extent

* Substituted by G I Order of 1937

THE STATE PRISONERS ACT. 1858.

(ACT NO. III OF 1858.)

(Received the Governor-General's assent on the 23rd January, 1858)

An Act to amend the law relating to the arrest and detention of State Prisoners

[Preamble omitted by G I Order of 1937]

1 —*Repeal of part of section I, cl (1) of Bombay Regulation (XXV of 1827)*—[Repealed by Act XIV of 1870]

2 *Regulations as to arrest and confinement of State Prisoners in force within Presidency towns*—[Repealed by G I Order of 1937]

[3 The provisions of section one of the State Prisoners Act, 1850, (which relate to the persons to whom warrants of commitment may be addressed and effect of warrants of commitment) shall apply in relation to warrants of commitment under Regulation II, 1819, of the Madras Code and Regulation XXV, 1827, of the Bombay Code, as they apply in relation to warrants of commitment issued under the Bengal State Prisoners Regulation 1818 by virtue of the powers conferred thereby on Provincial Governments]*

4 —*Arrest, etc, made before passing of this Act legalized*—[Rep. by G I Order of 1937]

[5 (1) A State prisoner who is or is to be confined in any Province under the provisions of any of the said Regulations for reasons connected with the maintenance of public order therein may, by arrangement between the Provincial Governments concerned be transferred to or, as the case may be retained in another Province and confined in that other Province in accordance

(2) Nothing in this section shall be construed as limiting the power of the Central Government to transfer State prisoners from one place of confinement in a Governor's Province or a Chief Commissioner's Province to another place of confinement in that or any other Province, or the power of a Provincial Government to transfer State prisoners from one place of confinement in the Province to another place of confinement in the Province]†

Extent

[6 This Act extends to the whole of British India (including Berar)]†

* Substituted by G I Order of 1937

† Inserted by G I Order of 1937

THE STATE PRISONERS ACT (XXXIV OF 1850)

CONTENTS

SECTION

- 1 Persons to whom warrants of commitment may be addressed and effect of warrant of commitment

SECTION

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3 [*Repealed*]

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An Act for the better custody of State Prisoners

Preamble—[*Omitted by G I Order of 1937*]

[1 (1) The warrant of commitment of any State prisoner under the Bengal State Prisoners Regulation, 1818, may if it is issued by virtue of the powers conferred by that regulation on the Central Government be directed to the commandant of any fortress or the officer in charge of any jail or place, anywhere in any Governor's Province or Chief Commissioner's Province and may if it is issued by virtue of the powers conferred by that Regulation on Provincial Governments, be directed to the commandant of any fortress or the officer in charge of any jail or place anywhere within the Province in question, but any such warrant issued under that Regulation, whatever the powers by virtue of which it is issued shall be sufficient authority for the arrest of the State prisoner anywhere in any Governor's Province or Chief Commissioner's Province and for his detention until he can be handed over to the commandant or officer to whom the warrant is directed or dealt with in accordance with sub section (1) of section five of the State Prisoners Act, 1858

Provided that a State-prisoner shall not be arrested under a warrant issued by virtue of the powers conferred by the said Regulation on Provincial Governments except with the consent of the Government of the Province in which he is arrested

(2) This section applies throughout British India (including Berar)]*

2 —[*Repealed by G I Order of 1937*]

3 —[*Repealed by Act XIII of 1891*]

THE STATE PRISONERS ACT (III OF 1858)

CONTENTS

SECTION

- 1 [*Repealed*]
2 Regulations as to arrest and confinement of State Prisoners in force within Presidencies—[*Repealed*]
3 Persons to whom warrant of Commitment may be addressed and effect of warrant of Commitment

SECTION

- 4 [*Repealed*]
5 Removal of State prisoners from one Province to another province
6 Extent

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(ACT NO. III OF 1858.)

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[Preamble omitted by G I Order of 1937]

1—*Repeal of part of section I, cl (1) of Bombay Regulation (XXV of 1827)—[Repealed by Act XIV of 1870]*

2 *Regulations as to arrest and confinement of State Prisoners in force within Presidency town—[Repealed by G I Order of 1937]*

[3 The provisions of section one of the State Prisoners Act, 1850, (which relate to the persons to whom warrants of commitment may be addressed and effect of warrants of commitment) shall apply in relation to warrants of commitment under the Bengal State Prisoners Regulation, 1818 may be addressed and the effect of such warrants) shall apply in relation to warrants of commitment under Regulation II, 1819, of the Madras Code, and Regulation XXV, 1827. of the Bombay Code, as they apply in relation to warrants of commitment issued under the Bengal State Prisoners Regulation, 1818, by virtue of the powers conferred thereby on Provincial Governments]*

4—*Arrest, etc., made before passing of this Act legalized—[Rep. by G I Order of 1937]*

[5 (1) A State prisoner who is or is to be confined in any Province under the provisions of any of the said Regulations for reasons connected with the maintenance of public order therein may, by arrangement between the Provincial Governments concerned, be transferred to or, as the case may be, retained in another Province and confined in that other Province in accordance with that one of the said Regulations which is in force in that other Province in all respects as if reasons connected with the maintenance of public order in that other Province required his confinement therein.

(2) Nothing in this section shall be construed as limiting the power of the Central Government to transfer State prisoners from one place of confinement in a Governor's Province or a Chief Commissioner's Province to another place of confinement in that or any other Province, or the power of a Provincial Government to transfer State prisoners from one place of confinement in the Province to another place of confinement in the Province]†

I extend

[6 This Act extends to the whole of British India (including Berar)]‡

* Substituted by G I Order of 1937

† Inserted by G I Order of 1937

BENGAL STATE PRISONERS REGULATION (III OF 1818.)

CONTENTS.

SECTION

- 1 PREAMBLE
- 2 Proceeding for placing persons under restraint as State prisoners
Form of warrant
Authority of warrant
- 3 Officers having custody of State prisoners to submit periodical reports
- 4 State prisoners in custody of Zilla Magistrate by whom to be visited
State prisoners in custody of public officer not being Zilla Magistrate by whom to be visited
- 5 Representations by State prisoners to be submitted to Government
- 6 Report to Government regarding confinement &c, of prisoners

SECTION

- 7 Appropriation of allowances for support
- 7A Division of functions between Central Government and Provincial Government
- 8 [*Repealed*]
- 9 Attachment of estates by orders of Government without decision of Court
- 10 Management of attached estates
Attached land not liable to sale in execution
Government to arrange for satisfaction of decree
- 11 Rules as to cases where Government orders release of estate from attachment
- 12 Extent

THE BENGAL STATE PRISONERS REGULATION, 1818. (BENGAL REGULATION 3 OF 1818)

[7th April, 1818]

A Regulation for the confinement of State Prisoners

- 1 WHEREAS reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign powers, the preservation

Preamble.
of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adopted to the nature of the case, or may for other reasons be unadvisable or improper,

and whereas it is fit that, in every case of the nature herein referred to the determination to be taken should proceed immediately from the authority of the [Government]*,

and whereas the ends of justice require that, when it may be determined any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the [Government]* all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed,

and whereas the ends of justice also require that attention be paid to the health of every State prisoner confined under this Regulation,

* Substituted by G I Order of 1937

and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family,

and whereas the reasons above declared sometimes render it necessary that the estates and lands of zamindars, talukdars and others* should be attached and placed under the temporary management of the Revenue-authorities without having recourse to any judicial proceeding,

and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government; [it is hereby enacted as follows —]†

2 First —When the reasons stated in the preamble of this Regulation [may seem to the Government]† to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, [a warrant of committal shall be issued by the Government]† to the officer in whose custody such person is to be placed

Proceeding for placing persons under restraint as State prisoners

[**Second** —The warrant of commitment shall be in one of the forms set out in Appendix to this Regulation which is appropriate to the case

Form of warrant

Third —The warrant of commitment shall in relation to a person to be confined for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, be sufficient authority for his detention in any fortress, jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress, jail or other place in that Province]†

Authority of warrant

3 Every officer in whose custody any State prisoner may be placed shall, on the first of January and first of July of each year, submit a report to the [Government]† on the conduct, the health and the comfort of such State prisoner, in order that the [Government]† may determine whether the orders for his detention shall continue in force or shall be modified

Officers having custody of State prisoners to submit periodical reports

4 First —When any State prisoner is in the custody of a Zila Magistrate, the Judges are to visit such State prisoner on the occasion of the periodical sessions, and they are to issue any orders concerning the treatment of the State prisoner which may appear to them advisable, provided they be not inconsistent with the orders of the [Government]† issued on that head

State prisoners in custody of Zila Magistrate, by whom to be visited

* Certain words after this repealed by G. I. Order of 1937 have been omitted

† The words within brackets have been substituted by G. I. Order of 1937

BENGAL STATE PRISONERS REGULATION (III OF 1818.)

CONTENTS.

SECTION

- 1 PREAMBLE
- 2 Proceeding for placing persons under restraint as State prisoners
Form of warrant
Authority of warrant
- 3 Officers having custody of State prisoners to submit periodical reports
- 4 State prisoners in custody of Zilla Magistrate by whom to be visited
State prisoners in custody of public officer not being Zilla Magistrate
- 5 " " " " " "
- 6 " " " " " " confinement etc., of prisoners

SECTION

- 7 Appropriation of allowance for support
- 7A Division of functions between Central Government and Provincial Government
- 8 [Repealed]
- 9 Attachment of estates by orders of Government without decision of Court
- 10 Management of attached estates in execution
Government to arrange for satisfaction of decree
- 11 Rules as to cases where Government orders release of estate from attachment
- 12 Extent

THE BENGAL STATE PRISONERS REGULATION, 1818. (BENGAL REGULATION 3 OF 1818)

[7th April, 1818]

A Regulation for the confinement of State Prisoners

- 1 WHEREAS reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign powers, the preservation

Preamble.
of tranquillity in the territories of Native Princes entitled to its protection, and the security of the British dominions from foreign hostility and from internal commotion occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding or when such proceeding may not be adopted to the nature of the case, or may for other reasons be unadvisable or improper,

and whereas it is fit that, in every case of the nature herein referred to the determination to be taken should proceed immediately from the authority of the [Government]*,

and whereas the ends of justice require that, when it may be determined any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the [Government]* all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed,

and whereas the ends of justice also require that attention be paid to the health of every State prisoner confined under this Regulation,

* Substituted by G. I. Order of 1937.

and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family

and whereas the reasons above declared sometimes render it necessary that the estates and lands of zamindars talukdars and others* should be attached and placed under the temporary management of the Revenue authorities without having recourse to any judicial proceeding

and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government, [it is hereby enacted as follows —]†

2 *First* — When the reasons stated in the preamble of this Regulation [may seem to the Government]† to require that an individual should be placed under personal restraint without any immediate view to ulterior proceedings of a

Proceeding for placing persons under restraint as State prisoners

judicial nature, [a warrant of committal shall be issued by the Government]† to the officer in whose custody such person is to be placed

[*Second* — The warrant of commitment shall be in one of the forms set out in Appendix to this Regulation which is appropriate to the case

Form of warrant

Third — The warrant of commitment shall in relation to a person to be confined for reasons connected with defence external affairs or the

Authority of warrant

discharge of the functions of the Crown in its relations with Indian States be sufficient authority for his detention in any fortress jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress jail or other place in that Province]†

3 Every officer in whose custody any State prisoner may be placed shall, on the first of January and

Officers having custody of State prisoners to submit periodical reports

prisoner, in order that the [Government]† may determine whether the orders for his detention shall continue in force or shall be modified

4 *First* — When any State prisoner is in the custody of a Zila Magistrate, the Judges are to visit such

State prisoners in custody of Zila Magistrate, by whom to be visited

State prisoner on the occasion of the periodical sessions, and they are to issue any orders concerning the treatment of the State prisoner which may appear to them advisable, provided they be not inconsistent with the orders of the [Government]† issued on that head

* Certain words after this repealed by G. I. Order of 1877.
† The words within brackets have been substituted

omitted
37

Second—When any State prisoner is placed in the custody of any

State prisoners in custody of public officer, not being Zila Magistrate, by whom to be visited

public officer not being a Zilla Magistrate, the [Government]* will instruct either the Zila Magistrate, or the Judge or any other public officer, not being the person in whose custody the prisoner may be placed,

to visit such prisoner at stated periods, and to submit a report to Government regarding the health and treatment of such prisoner

5 The office in whose custody any State prisoner may be placed

Representations by State prisoners to be submitted to Government

is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the [Government]*

6 Every officer in whose custody any State prisoner may be

Report to Government regarding confinement, etc., of prisoners

placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the [Government]* whether the degree of confinement to which he may

be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family, according to their rank in life

7 Every officer in whose custody any State prisoner may be

Appropriation of allowance for support

placed shall take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object

[7A (1) Where a person is, or is to be confined in a Governor's

Division of functions between Central Government and Provincial Government

Province under this Regulation for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States,

the warrant of commitment, and any orders as to his release or the place of his detention shall be issued by the Central Government, and the amount of the allowance to be fixed for his support shall be fixed by the Central Government and shall be paid by the Central Government to, and applied by the Provincial Government, and all reports and representations to be made under the foregoing provisions of this Regulation shall be submitted and forwarded both to the Central Government and the Provincial Government

(2) Subject as aforesaid, all things to be done by or to the Government in relation to any persons confined or to be confined under this Regulation shall be done by or to the Provincial Government

(3) References in the preceding sections of this Regulation to the Government shall be construed in accordance with the foregoing provisions of this section

(4) No Government shall, in relation to any person confined or to be confined for reasons of State connected with the discharge of the functions of the Crown in its relations with Indian States, act otherwise than with the concurrence of the Crown Representative†

* Substituted by G I Order of 1937

† Inserted by G I Order of 1937

8 (*Applicability of ss 3 to 7 to persons now confined as State prisoners*)—[*Repealed by the Repealing Act, 1874 (16 of 1874)*]

9 Whenever the [Provincial Government]* for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any zamindor, jagirdar, talukdar or other person, without any previous decision of a Court of Justice or other judicial proceeding, the grounds on which the Resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated † to the Judge and Magistrate of the district in which the lands or estates may be situated, and to the Sadr Dewan Adalat and Nizamat Adalat

10 *First*—The lands or estates which may be so temporarily attached shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjudged on the same principles as those of other estates held under *khas* management

Second—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realisation of fines or otherwise, during the period in which they may be so held under attachment

Third—In the cases mentioned in the preceding clause the Government will make such arrangements as may be fair and equitable for the satisfaction of the decrees of the Civil Courts

11 Whenever the [Provincial Government]* shall be of opinion that the circumstances which rendered the attachment of such estate necessary have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue authorities will be directed to release the estate from attachment, adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment

[12 This Regulation, so far as it relates to the confinement of persons for reasons connected with defence, external affairs and the discharge of the functions of the Crown in its relation with Indian States, extends to the whole of all the Governors' Provinces and Chief Commissioners Provinces and so far as relates to other matters, extends to all those Provinces except Madras, Bombay and Sind]‡

* Substituted by G. I. Order of 1937

† Certain words after this, repealed by G. I. Order of 1937, have been omitted.

‡ Inserted by G. I. Order of 1937

'APPENDIX'

FORMS OF COMMITMENT

Form of Commitment for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States

To the (here insert the officer's designation)

hereby required and commanded in pursuance of that determination to receive the person above named into your custody and to deal with him in accordance with the orders of the Government and the provisions of the Bengal State Prisoners Regulation 1818

Form of Commitment in other Cases

To the (here insert officer's designation)

Whereas the [Governor] [Governor General in Council] [Governor General] (omit reasons connected with the

person above named into your custody and to deal with him in conformity with the orders of the Government and the provisions of the Bengal State Prisoners Regulation 1818

THE MADRAS STATE PRISONERS REGULATION (MADRAS REGULATION II OF 1819)

CONTENTS

PREAMBLE

SECTION

- 2 Procedure in placing persons under restraint as State prisoners
Form of warrant
Warrant to be authority for detention of State prisoner
- 3 Officers having custody of State prisoners to report to Government
- 4 [*Repealed*]
- 5 Representation by State prisoners to be submitted to Governor
- 6 Reports as to their confinement health and allowances

SECTION

- 7 Allowance to be appropriated for support of State prisoner
- 8 [*Repealed*]
- 9 Attachment of estates by orders of Government when to be communicated to Court
- 10 Management of attached estates
Not liable to be sold while under attachment
Satisfaction of decrees of Courts
- 11 Procedure when Government releases estate from attachment
- 12 Extent

THE MADRAS STATE PRISONERS REGULATION, 1819 (MADRAS REGULATION II OF 1819)

A Regulation for the confinement of State prisoners

WHEREAS [reasons connected with the maintenance of public order in the Province]* occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding or when such proceeding may not be adapted to the nature of the case, or may for other reasons be

* Substituted by G I Order of 1937

inadvisable or improper, and whereas it is fit that, in every case of the nature herein referred to the determination to be taken should proceed immediately from the authority of the [Provincial Government]*, and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision and the person affected thereby should at all times be allowed freely to bring to the notice of the [Provincial Government]* all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed, and whereas the ends of justice also require that due attention be paid to the health of every State prisoner and that suitable provision be made for rank in life and to his own wants and [reasons of State]* sometimes render it necessary that the estates and lands of zamindars, talukdars and others† should be attached and placed under the temporary management of the Revenue-authorities, without having recourse to any judicial proceeding and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government, [it is hereby enacted]*

2 *First*—When [reasons connected with the maintenance of public order in the Province]* may seem to the [provincial Government]* to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment [shall be issued by the Provincial Government]* to the officer in whose custody such person is to be placed

Procedure in placing persons under restraint as State prisoners

Second—The warrant of commitment shall be according to the form prescribed in the Appendix to this Regulation

Form of warrant

Third—The warrant of commitment shall be sufficient authority for the detention of any State prisoner in any fortress, jail or the place within the [Province]*

Warrant to be authority for detention of State prisoner

3 Every officer in whose custody any State prisoner may be placed shall on the first of January and first of July of each year, submit a report to the [Provincial Government,]* on the conduct, the health and the comfort of such State prisoner, in order that the [Provincial Government]* may determine whether the orders for his detention shall continue in force or shall be modified

Officers having custody of State prisoners to report to Government

4 [State-prisoners to be periodically visited]—[Repealed by Act XVI of 1874]

* Substituted by G. I. Order of 1937

† Certain words after this repealed by G. I. Order of 1937, have been omitted.

5 The officer in whose custody any State prisoner may be placed is to forward with such observations as may appear necessary, every representation by State prisoners to be submitted to Governor which such State prisoner may from time to time be desirous of submitting to the [Provincial Government] *

6 Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable report to the [Provincial Government] * whether the degree of confinement to which he may be subjected appears liable to injure his health and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family according to his rank in life

7 Every officer in whose custody any State prisoner may be placed shall take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object

8 [Foregoing Provisions made applicable to persons already confined as State prisoners] — [Rep by Act XII of 1876]

9 Whenever the [Provincial Government] * for [reasons of State] * shall judge it necessary to attach the estates or lands of any zamindar jagirdar, talukdar or other person, without any previous decision of a Court of justice or other judicial proceeding, the grounds on which the resolution of Government may have been adopted and such other information connected with the case as may appear essential shall be communicated † to the Judge of the district in which the lands or estates may be situated and to the Sadr and Faujdary Adalat

10 First—The lands or estates which may be so temporarily attached shall be held under the management of the officer of Government in the Revenue Department and the collection shall be made and adjusted on the same principles as those of other estates held under khas management

Second—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts or for the realisation of fines or otherwise during the period in which they may be so held under attachment

Third—In the cases mentioned in the preceding clause the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts

11 Whenever the [Central Government] * shall be of opinion that the circumstances which rendered the attachment of such estate necessary has ceased to operate and that the manage-

Procedure when Government releases estate from attachment

* Substituted by G I Order of 1937

† Certain words after this repealed by G I Order of 1937 have been omitted

ment of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period which may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment

Extent

[12. This Regulation extends to the whole of the Province of Madras]*

APPENDIX

FORM OF WARRANT OF COMMITMENT.

To the (here insert the officer's designation)

Whereas the Governor † for good and sufficient reasons has seen fit to deter personal restraint and committal in into your custody, and the provisions

of Regulation II of 1819 †

THE SUGARCANE ACT, (XV 1934).

CONTENTS

PREAMBLE

SECTION

- 1 Short title, extent and commencement
- 2 Definitions
- 3 Declaration of controlled areas and fixing of prices
- 4 Previous publication of notifications under section 3
- 5 Penalty for purchase of sugar cane

SECTION

- in contravention of notification under section 3
- 6 Sanction for prosecution under this Act
- 7 Power of Provincial Government to make rules
- 8 Power of Central Government to make rules.

THE SUGARCANE ACT, 1934.

(ACT NO. XV OF 1934.)

(Received the assent of the Governor-General on the 1st May, 1934)

An Act to regulate the price of sugarcane intended for use in sugarfactories

WHEREAS it is expedient, for the purpose of assuring to sugarcane growers a fair price for their produce, to regulate the price at which sugarcane intended to be used in the manufacture of sugar may be purchased by or for factories, It is hereby enacted as follows:—

Notes — It was announced by the Honourable Finance Member in the course of his speech introducing the budget proposals of 1934-35 that the Government of India would introduce legislation which would enable Provincial Government to apply schemes for enforcing a minimum price for cane to be paid by the factory grower. — *Report of the Select Committee*

Short title, extent and commencement

1 (1) This Act may be called the Sugarcane Act, 1934,

* Inserted by G. I. Order of 1937

† Certain words after (11), repealed by G. I. Order of 1937, have been

[(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas]*

(3) This section shall come into force at once; the remaining sections of this Act shall come into force [in any province]* on such date as the [Provincial Government]† may, by notification in the [official Gazette],‡ appoint in that behalf

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) ‘controlled area’ means any area specified in a notification issued under sub section (1) of section 3,

(2) ‘factory’ means any premises (including the precincts thereof) wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power, and

(3) ‘sugar’ means any from of sugar containing more than ninety per cent of sucrose

3 (1) The [Provincial Government]† may, by notification in the [official Gazette],‡ declare any area specified in the notification to be a controlled area for the purposes of this Act,

(2)§ The [Provincial Government]† may, by notification in the [official Gazette],‡ fix a minimum price or minimum prices for the purchase in any controlled area of sugarcane intended for use in any factory

(3) The [Provincial Government]† may, by notification in the [official Gazette]‡ prohibit in any controlled area the purchase of sugarcane intended for use in any factory otherwise than from the grower of the sugarcane or from a person licensed by the [Provincial Government]† to act as a purchasing agent

4 Not less than thirty days before the issue of any notification under sub section (1) or sub-section (2) of section 3 the [Provincial Government]† shall publish in the [official Gazette]‡ and in such other manner (if any) as it thinks fit a draft of the proposed notification specifying a date on or after which the draft will be taken into consideration and shall consider any objection or suggestion which may be received from any person with respect to the draft before the date so specified

5 Whoever in any controlled area purchases any sugarcane intended for use in a factory at a price less than the minimum price fixed therefor by notification under sub-section (2) of section 3 or in contravention of any prohibition made under sub-section (3) of section 3 shall be punishable with fine which may extend to two thousand rupees

Penalty for purchase of sugar cane in contravention of notification under section 3

1937

1937

Order of 1937
by G I Order of
Order 1937
G I Order of
der of 1937

6 No Court shall take cognizance of any offence punishable under section 5 except upon complaint made by order of or under authority from the District Magistrate

Sanction for prosecution under this Act

7 (1) The [Provincial Government]* may, by notification in the [official Gazette]† make rules for the purpose of carrying into effect the objects of this Act

Power of Provincial Government to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the carrying out of inquiries preliminary to the exercise of the powers conferred by section 3,

(b) establishing Advisory Committees for any purpose connected with the administration of this Act and defining the powers, functions and procedure of such Committees,

(c) the issue of licences to purchasing agents, the fees for such licences, and the regulation of the purchase and sale of sugarcane by and to such agents,

(d) the organisation of growers of sugarcane into societies for the sale of sugarcane to factories,

(e) the authorities by which any functions under this Act or the rules made thereunder are to be performed, and

(f) the records, registers and accounts to be maintained for ensuring compliance with the provisions of this Act

(3) In making any rule under sub-section (1) or under clause (c) or clause (f) of sub-section (2), [the Provincial Government]* may provide that a breach of the rule shall, where no other penalty is provided by this Act be punishable with fine not exceeding two thousand rupees

8 The [Provincial Government]* after previous publication may, by notification in the [official Gazette]†, make rules providing for the exemption of factories or any class of factories from the

Power of Provincial Government to make rules

provisions of this Act

THE SUGAR (EXCISE DUTY) ACT (XIV OF 1934.)

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1 Short title and extent	8
2 Definitions	9
3 Imposition of duty on sugar	10
4 Recovery of duty with penalty	11
5 Issue of sugar from factory	12
6 Power of Central Government to impose customs duty on sugar	13
7 Penalty for issue of sugar from factory in contravention of section 5	14

* In British India the word "Government" means the Government of India or the Government of a Province.
 † In 1937 the word "Gazette" means the Gazette of India or the Gazette of a Province.

THE SUGAR (EXCISE DUTY) ACT, 1934

(ACT NO XIV OF 1934)

Received the assent of the Governor-General on the 1st May, 1934.

An Act to provide for the imposition and collection of an excise duty on Sugar

WHEREAS it is expedient to impose an excise duty on sugar produced in factories and to provide for the collection thereof, it is hereby enacted as follows —

Notes — (1) The Bill is designed to impose an excise duty on sugar produced in factories in British India. The rate of tax is fixed so as to be equal to the excess of the emergency surcharge over the figure by which according to the Government's calculations it would have been incumbent upon them to raise the protective duty in exercise of the power under section 4 of the Sugar Industry (Protection) Act 1933 had the emergency

been entrusted to the Local Governments but the Bill has been so drafted as to be at a later stage — *Statement of Objects*

and Reasons

Short title and extent

1 (1) This Act may be called the Sugar (Excise Duty) Act, 1934

[(2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas]*

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) 'factory' means any premises wherein, or within the precincts of which, twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power

(b) 'owner' includes any person expressly or impliedly authorized by the owner of a factory to be his agent in respect of such factory

(c) 'sugar' means any form of sugar containing more than ninety per cent of sucrose

(d) 'khandsari sugar' means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed and

(e) 'palmyra sugar' means sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm

3 (1) A duty of excise shall be levied on all sugar produced in any factory in [British India]† and either issued out of such factory on or after the 1st day of April 1934, or used within such factory on or after the said date in the manufacture of any commodity other than sugar and shall be payable by the owner of the factory

(2) The duty payable under sub section (1) shall be at the following rates namely —

(i) on khandsari sugar at the rate of ten annas per cwt

* In Burma the words within brackets have been omitted by G. B. Order of 1937
† In Burma for 'British India' read 'British Burma' vide G. B. Order of 1937

(ii) on all other sugar except palmyra sugar at the rate of one rupee and five annas per cwt

(i) on palmyra sugar at such rate, if any as may be fixed in this behalf by the [Central Government]* after such enquiry as he may think fit

4 (1) If any duty payable under section 3 is not paid within the time fixed by rules made in that behalf under this Act it shall be deemed to be an arrear and the authority to which such duty is payable may in lieu thereof, recover any sum not exceeding double the amount of duty unpaid which such authority may in its discretion think it reasonable to require

(2) An arrear of duty, or any sum recoverable in lieu thereof under this section shall be recoverable as an arrear of land revenue and shall be recoverable in addition to and not in substitution for, any other penalty incurred under this Act

5 No person shall issue any sugar out of a factory, except in accordance with the provisions of rules made in that behalf under this Act or until such rules are made, in accordance with the general or special orders of the [Central Government] *

6 (1) The [Central Government]* may, by notification in the [official Gazette]† impose on sugar brought into [British India]‡ form the territory of any State in [India]‡ not being territory which has been declared under section 5 of the Indian Tariff Act 1894 to be foreign territory for the purposes of that section, a duty of customs equivalent to the excise duty imposed by this Act on sugar produced in [British India] ‡

(2) The [Central Government]* may by notification in the [official Gazette]† declare that the provisions of the Land Customs Act 1924, shall apply to the levy of the duty of customs imposed under this section and on such declaration that Act shall apply as if the expression foreign territory in that Act included territory forming part of a State in [India] ‡

7 Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to two thousand rupees

8 Whoever evades or attempts to evade the payment of any duty payable by him under this Act or fails to supply any information which he is required by any rule made under this Act to supply, or knowingly supplies false information, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Governor" and "G. O." for "G. I. Order".
† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Government" and "G. O." for "G. I. Order".
‡ In British India read "British India" and in Burma for these words read the word "Burma".

9 Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Majesty

10 The [Central Government]* may, by notification in the [Official Gazette]†, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as he may consider necessary or desirable to adapt them to circumstances, be applicable in regard to like matters in respect of the duty on sugar imposed by section 3

11 (1) The [Central Government]* may, by notification in the [Official Gazette]†, make rules to carry into effect the purposes and objects of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duty shall be payable and the recovery of arrears,

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of [officers of the Crown]‡ to supervise within any factory such issue or use,

(c) impose on the owners of factories and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns the particulars to be contained therein, and the manner in which they shall be verified,

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 9 of sugar in respect of which breaches of the Act or rules have been committed, and the disposal of sugar so detained or confiscated,

(e) authorize and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar, and

(f) authorize and regulate the composition of offences against or liabilities incurred under the Act and rules

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(3) In making any rule under this section the [Central Government]* may provide that a breach of the rule shall where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees §

THE INDIAN TEA CONTROL ACT (VIII OF 1938)

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THE INDIAN TEA CONTROL ACT, 1938.

(ACT NO VIII OF 1938)

[PASSED BY THE INDIAN LEGISLATURE]

(Received the assent of the Governor-General on the 28th March, 1938)

An Act to provide for the control of export of tea from and for the control of extension of the cultivation of tea in British India

WHEREAS it is expedient for the purpose of implementing the agreement which the Central Government has entered into with the

* In British India the words within brackets have been substituted by G I Order 1937. In Burma for these words read the word Governor vide G B Order of 1937.

§ Certain words after this repealed by G I Order of 1937 and G B Order of 1937 have been omitted.

9 Any Court trying an offence under this Act may order that any sugar, together with the packages or coverings thereof, in respect of which the Court is satisfied that an offence under this Act has been committed, shall be forfeited to His Majesty

10 The [Central Government]* may by notification in the [Official Gazette]†, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of and exemption from customs duties, drawback of duty, warehousing offences and penalties confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as he may consider necessary or desirable to adapt them to circumstances be applicable in regard to like matters in respect of the duty on sugar imposed by section 3

11 (1) The [Central Government]* may, by notification in the [Official Gazette]†, make rules to carry into effect the purposes and objects of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the assessment and collection of the duty and the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duty shall be payable and the recovery of arrears

(b) regulate the issue of sugar out of or the use of sugar in the manufacture of commodities within any factory and provide for the appointment of [officers of the Crown]‡ to supervise within any factory such issue or use,

(c) impose on the owners of factories and on persons engaged in the sale of sugar, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns the particulars to be contained therein and the manner in which they shall be verified,

(d) provide for the detention of sugar for the purpose of exacting the duty, the confiscation otherwise than under section 9 of sugar in respect of which breaches of the Act or rules have been committed and the disposal of sugar so detained or confiscated,

(e) authorize and regulate the inspection or search of any place or conveyance used for the manufacture, storage or carriage of sugar, and

(f) authorize and regulate the composition of offences against or liabilities incurred under the Act and rules

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(3) In making any rule under this section the [Central Government]* may provide that a breach of the rule shall where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees §

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§ Certain words after the have been omitted.

Governments of Ceylon and the Netherlands India to give effect to the provisions of the International Agreement made between associations representing the tea growers of India, Ceylon and the Netherlands India, to provide for the control of the export of tea from, and for the control of the extension of the cultivation of tea in British India, It is hereby enacted as follows:—

Short title extent, commencement and duration

1 (1) This Act may be called the Indian Tea Control Act, 1938

(2) It extends to the whole of British India

(3) It shall come into force on the 1st day of April 1938

(4) It shall remain in force only up to the 31st day of March, 1943

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "Committee" means the Indian Tea Licensing Committee constituted under this Act,

(b) "Customs-collector" means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878,* for the purposes of that Act, or of that Act, as applied to the import and export of goods by air, or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924,† as the case may be,

(c) "export" means to take out of British India by land sea or air to any place outside India other than the French and Portuguese Settlements bounded by India or a country notified in this behalf by the Central Government by notification in the official Gazette,

(d) "Indian export allotment" means the total quantity of tea which may be exported during any one financial year,

(e) "owner" includes any agent of an owner,

(f) "prescribed" means prescribed by rules made under this Act

(g) "standard export figure" means a quantity of 383 242, 916 pounds *avoirdupois* of tea,

(h) "tea" means—

(i) in Chapter III and Chapter IV, the plant *Camellia Thea* (Linn.), and

(ii) elsewhere, the commodity known as tea made from the leaves of the plant *Camellia Thea* (Linn.) including green tea but excluding tea waste, and

(j) "tea seed" includes seeds, roots, stumps, cuttings, buds and any living portion of the plant *Camellia Thea* (Linn.), which may be used to propagate that plant

CHAPTER I

THE INDIAN TEA LICENSING COMMITTEE

Constitution of the Indian Tea Licensing Committee

3 (1) The Central Government shall constitute a Committee, to be called the Indian Tea Licensing Committee, consisting of the following members —

(a) one member to be nominated by each of the following bodies, namely —

- (i) the Indian Tea Association, Calcutta,
- (ii) the Assam Branch of that Association
- (iii) the Surma Valley Branch of that Association,
- (iv) the Dooars Planters Association,

(v) the Indian Tea Planters Association Jalpaiguri, and the Terai Indian Planters Association, Terai acting together and

(vi) the Darjeeling Planters Association and the Terai Planters Association, acting together ,

(b) two members to be elected in the prescribed manner by and from among Indian owners of tea estates to which export quotas were allotted under the Indian Tea Control Act, 1933,* for the financial year beginning on the 1st day of April, 1937, one to represent the Indian Tea Planters of the Assam Valley and one to represent the Indian Tea Planters of the Surma Valley, the Indian State of Tripura, the Chittagong Hill Tracts and the District of Chittagong ;

(c) three members to be nominated by the United Planters Association of Southern India one to represent tea estates in British India, and one to represent tea estates in India States ;

(d) one member to be nominated by the Government of the Indian State of Travancore to represent the tea estates in that State ;

(e) one member to be elected in the prescribed manner by and from among Indian owners of tea estates to represent tea estates in Southern India excluding Travancore owned by Indians , and

(f) one member to be elected by owners of tea gardens of Kangra, Dehra Dun, Kumaon Behar and other unrepresented Tea Estates

(2) Within three months after the commencement of this Act, the Central Government shall publish in the official Gazette the names of all members of the Committee, and thereupon the Committee shall be deemed to be constituted.

(3) Until the Committee is constituted as provided in sub section (2), the Indian Tea Licencing Committee constituted under the Indian Tea Control Act, 1933,* shall be deemed to be the Committee constituted under this section

4 (1) If any authority or body fails to make within two months any nomination or election which it is entitled to make under section 3, the Central Government may itself nominate a member to fill the vacancy

Vacancies,

(2) Where a member of the Committee dies, resigns, ceases to reside in India or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which is entitled to make the first nomination or election under section 3, or where such recommendation is not made within two months, then on its own initiative, nominate a person to fill the vacancy.

(3) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in or any defect in the constitution of the Committee

5 The Committee shall elect a chairman from amongst its members, and may appoint such sub committees and executive officers as may be necessary for the efficient performance of the duties imposed upon it by this Act

6 (1) The Committee may make by laws consistent with this Act and with the rules made thereunder for all or any of the following matters namely —

(a) the regulation of the procedure to be followed at meetings of the Committee

(b) the appointment of sub committees ,

(c) the delegation to sub committees members or officers of the Committee of any of the powers of the Committee under this Act

(d) the determination of the travelling allowances of the members or officers of the Committee or of the members of a sub committee ,

(e) the appointment, promotion and dismissal of officers assessors and servants of the Committee, and the creation and abolition of appointments of such officers, assessors and servants ,

(f) the regulation of the grant of pay and leave to such officers assessors and servants and

(g) any other matter in respect of which by-laws may be made under this Act or the rules made thereunder

(2) All by laws made under this section shall be subject to the previous sanction of the Central Government

7 (1) Save in respect of proceedings and orders under section 28 and 29 and 30, all acts of the Committee shall be subject to the control of the Central Government which may cancel suspend or modify as it thinks fit any such act

(2) Without prejudice to the generality of the foregoing provision any person aggrieved by any order of the Committee under section 14 may appeal to either the Central Government or the High Court of the Province within which the tea estate is situated within sixty days from the date of such order

Provided that an appeal preferred to the Central Government or the High Court shall bar an appeal against the same order to the other

(3) The records of the Committee shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Central Government

(4) Subject to rules framed under the Act every owner of a tea estate to whom a quota is allotted shall be entitled to inspect the records of the Committee and on payment of the prescribed fee shall also be entitled to obtain copies of any proceedings or orders of the Committee

8 (1) The Committee shall publish an annual report and shall keep accounts of all fees received by it under this Act and of the manner in which they are expended and shall also publish a summary of the accounts along with the annual report

(2) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Central Government, and such auditors shall have power to disallow any item which has been in their opinion expended otherwise than in pursuance of the purposes of this Act

(3) If any item is disallowed under sub-section (2), an appeal shall lie to the Central Government whose decision shall be final

9 (1) The Central Government may, by notification in the official Gazette, declare the Committee to be dissolved and on the date of the publication of any such notification the Committee shall stand dissolved and this Act shall be deemed to be repealed

(2) When the Committee is dissolved either under this section or by the expiry of this Act, the unexpended balance of fees received by the Committee under this Act shall lapse to the Central Government

10 The Central Government may, by notification in the official Gazette, make rules—

(a) providing for the conduct of the elections referred to in clauses (b) and (c) of sub-section (1) of section 3,

(b) providing for the establishment and maintenance of offices by the Committee,

(c) providing for the conduct of business by the Committee and determining the number of members which shall form a quorum at meetings,

(d) providing for the maintenance by the Committee of a record of all business transacted and for submission of copies thereof to the Central Government,

(e) regulating the preparation of annual estimates of receipts and expenditure

(f) regulating the keeping of accounts of receipts and expenditure,

(g) determining the custody in which the current account of the Committee shall be kept, and the bank or banks at which surplus money at the credit of the Committee may be deposited at interest

(h) regulating the term of office of members of the Committee and the circumstances in which and the authority by which members may be removed and

(i) generally, to carry out the provisions of this Chapter

CHAPTER II

CONTROL OVER THE EXPORT OF TEA

11 Nothing in this Chapter shall apply to tea—

(a) proved to the satisfaction of the Customs collector to have been imported into British India from any port outside India, or

(b) shipped as stores on board any vessel, in such quantity as the Customs-collector considers reasonable having regard to the number of the crew and passengers and the length of the voyage on which the vessel is about to depart, or

(c) exported by post in packages not exceeding one pound *avoirdupois* in weight

Control of export of tea and
tea seed

12 (1) No tea shall be exported unless covered by a licence issued by or on behalf of the Committee

(2) No tea shall be taken by land, sea or air out of British India to any of the French or Portuguese Settlements bounded by India unless covered by a permit issued by or on behalf of the Committee

(3) No tea seed shall be exported unless covered by a permit issued by or on behalf of the Central Government

13 The Indian export allotment for each financial year during the operation of this Act shall be declared by the Central Government by notification in the official Gazette after consulting the Committee and paying due regard to all interests concerned and shall be expressed as a number of pounds *avoirdupois* equivalent to a stated percentage of the standard export figure

14 (1) Any tea estate or any sub-division of a tea estate to which an export quota was allotted under the Indian Tea Control Act, 1933,* and any tea estate which the Central Government may within one year from the commencement of this Act authorise to apply for the allotment of an export quota under this Act, shall on application made to the Committee for the allotment to the estate of an export quota have the right, subject to the provisions of this Act, to receive an export quota

(2) The export quota of a tea estate, that is, the total quantity of tea which may be exported by the owner of the tea estate during the financial year, shall be an amount bearing to the crop basis of the estate as determined by the Committee in accordance with the principles set forth in the Schedule the same proportion as the Indian export allotment for the financial year in question bear to the total of the crop basis of all tea estates in India for that year

(3) The crop basis of a tea estate may be redetermined by the Committee if—

(a) application is made by the owner of the estate in this behalf before the 30th day of September, 1938 and

(b) the Committee is satisfied that there exist grounds of special hardship arising out of circumstances not under the control of the owner or of any previous owner of the estate and relating to conditions existing prior to the 1st day of April, 1933

(4) The total of all export quotas allotted to tea estates for any financial year shall not exceed the Indian export allotment for that year

15 (1) The owner of a tea estate to which an export quota has been allotted for any financial year shall have a right to obtain at any time during

Right to export licences

that year export licences to cover the export of tea up to the amount of the unexhausted balance of the quota, that is up to the amount of the quota less the amount for which export licences have already been issued against it

(2) The right of the owner of a tea estate under this section may be transferred in whole or in part and subject to proof of the transfer to the satisfaction of the Committee and to the completion of the prescribed documents to enable the Committee to give effect to the transfer, the transferee shall have a right to obtain export licences up to the amount covered by the transfer or up to the amount of the unexhausted balance of the quota whichever may be less

(3) Subject to the conditions specified in sub section (2) any transferee referred to in that sub-section may again transfer the whole or any part of his rights to the owner of a tea estate but not to any other person

(4) Nothing in sub section (3) shall operate to restrict the issue of licences for the export of tea expressed to be sold with export rights

16 (1) The owner of any tea estate to which an export quota has been allotted or any person to whom he has transferred his rights may at any time before the 21st day of March of the financial year to which the quota relates apply in writing to the Committee for an export licence covering a stated quantity of tea

(2) If the unexhausted balance of the quota is sufficient to cover the stated quantity the Committee shall on receipt of the requisite fee issue an export licence covering the stated quantity

(3) Every licence shall be in duplicate in the prescribed form, shall bear the date of its issue and shall be valid up to the end of the financial year in which it is issued

Provided that save as provided in section 17 the Committee shall not date or issue any export licence after the end of the financial year in which the application for it was made

17 (1) Where the tea covered by an export licence issued under the Indian Tea Control Act, 1933* has not been exported before the 31st day of March, 1938 the person to whom the licence was granted may, before the 14th day of April 1938, forward the licence to the Committee and submit therewith an application for a special export licence covering the same quantity of tea, and the Committee shall on receipt of the requisite fee if any issue a special export licence accordingly

(2) Where tea in respect of which an export licence has been or could have been granted under this Act has not been exported before the end of the financial year in which the licence was or could have been issued the person to whom the licence was or could have been granted may, before the 14th day of April of the following financial year, forward an application to the Committee for a special export licence covering the same quantity of tea and the Committee

shall, on receipt of the requisite fee, if any, issue a special export licence accordingly

(3) A special export licence shall be in duplicate in the prescribed form, shall bear the date of its issue, and shall be valid in the case of a special export licence issued in the year 1938 up to the 30th day of June of that year and in the case of a special export licence issued in any subsequent year up to the 31st day of May of the year in which it was issued

(4) The quantity of tea covered by a special export licence shall be accounted for against the export quota of the year in which the original licence was or could have been issued under this Act or under the Indian Tea Control Act, 1933* as the case may be

Committee to maintain accounts of quotas

18 (1) The Committee shall maintain an account of every export quota showing in addition to such other particulars

as the Committee may think fit the licences issued against it and the unexhausted balance

(2) Any owner of a tea estate shall be entitled, on payment of the requisite fee to a copy of the account relating to his quota certified in the manner laid down in the by-laws

19 (1) No consignment of tea or tea seed shall be shipped or waterborne to be shipped for export or shall be exported until the owner has delivered to the Customs-collector a valid

Tea for export to be covered by licence or permit
export licence or special export licence in duplicate or a permit issued by or on behalf of the Central Government covering the quantity to be shipped

(2) No consignment of tea or tea seed shall be shipped or water borne to be shipped for carriage to any of the French or Portuguese Settlements bounded by India until the owner has delivered to the Customs collector a permit issued by or on behalf of the Committee or issued by or on behalf of the Central Government, as the case may be, covering the quantity to be shipped

(3) No permit for the passage of any tea by land into any of the French or Portuguese Settlements bounded by India shall be granted under sub section (1) of section 5 of the Land Customs Act, 1924† unless the application for such permit is accompanied by a permit granted in this behalf by the Committee covering the quantity to be passed

20 (1) The Committee may serve by post a notice upon the owner of any tea estate or upon his manager, requiring him to furnish within such period not being less than thirty days as it may specify in the notice, such returns relating to the production, sale and export of tea produced on the estate, or to any other matter as it may deem necessary to enable it to discharge its duties under this Chapter

(2) Where any return required under sub-section (1) in respect of any tea estate is not furnished within the period specified in the notice the Committee may refuse to allot a quota to that estate

under section 14 or, where a quota has already been allotted, may cancel the unexhausted balance of that quota and refuse to issue any further export licences under section 16 against that quota or to recognise or give effect to any transfer under section 15

21 (1) The Committee may serve by post a notice upon any person claiming to be the owner of any tea estate or upon his agent or manager or upon any person claiming to be the agent or the manager of the owner of any tea estate requiring him to furnish, within such period as may be specified in the notice or within such extended period as the Committee may allow, such documentary or other evidence as may be required to prove to the satisfaction of the Committee that such person is the owner of such tea estate or is the agent or manager of the owner of a tea estate as the case may be

(2) Where any person fails to comply with the requirements of a notice served on him under sub section (1) or where the evidence furnished by such person is insufficient to prove to the satisfaction of the Committee that such person is the owner of the tea estate of which he claims to be the owner or is the agent or manager of the owner of a tea estate as the case may be the Committee may refuse to issue to such person or to his agent or manager any export licences against the quota allotted to such tea estate

Fees

22 (1) The Committee may charge and collect the following fees namely —

(a) a licence fee for every export licence or special export licence or permit issued by it at such rates not exceeding one rupee per thousand pounds of tea or part thereof covered by the licence or permit as the Central Government may on the recommendation of the Committee by notification in the official Gazette fix in this behalf

(b) a fee, not to exceed eight annas per acre of the area concerned on any application under sub section (3) of section 14 for re-determination of crop basis and

(c) copying fees for certified copies of accounts of quotas at the rate of one rupee per copy

Provided that the owner of any tea estate to which a quota has been allotted under section 14 may make or the Committee may require him to make a consolidated payment of export licence fees at the rate fixed under clause (a) to cover the whole of the quota

(2) The Committee shall apply fees collected by it under this section to the meeting of expenses incurred by it in pursuance of the purposes of this Act and, with the previous sanction of the Central Government, to the payment of a contribution towards the maintenance of any international committee established in furtherance of the said purposes in or by tea producing countries generally

Power to make rules

23 The Central Government may, by notification in the official Gazette make rules—

(a) prescribing all matters requiring to be prescribed for purposes of the Schedule

(b) regulating the grant of permits for the carriage of tea to the French and Portuguese Settlements

(c) prescribing the documents referred to in sub section (2) of section 15,

(d) prescribing the form of export licences and special export licences and permits, and

(e) generally to carry out the purposes of this Chapter

24 No quota fixed, no order granting or refusing to grant any licence or permit and no other act done by the Committee under this Chapter shall be called in question in any Court except the High Court under the provisions of sub-section (2) of section 7 of this Act

25 Where legislation enacted in any Indian State has made provision in pursuance of the agreement implemented by and in consonance with the provisions contained in this Act for the control of the export of tea from and for the control of the extension of the cultivation of tea in the State the Committee shall issue export licences, special export licences and permits for the export or carriage out of British India of tea produced in any such State in the same manner and subject to the same incidents as such licences or permits are issued in respect of tea produced in British India

CHAPTER III

CONTROL OVER THE EXTENSION OF TEA CULTIVATION

26 So long as this Act remains in force no one shall plant tea in any land which was not planted with tea on the 31st day of March, 1938 save in pursuance of a written permission granted by or on behalf of the Committee

Method of control of extension of tea cultivation

Provided that this section shall apply to the replacing of tea areas by planting new areas but nothing in this section shall prohibit the in-filling of or supplying of vacancies on land planted with tea at the 31st day of March 1933, or the replanting of tea upon—

(a) land planted with tea at the 31st day of March, 1933 from which the original bushes have been uprooted or

(b) land planted with tea at the 31st day of March 1931 from which the original bushes have been uprooted

27 (1) Subject to the provisions of section 29 and section 30 the total area of land in British India in respect of which the permissions referred to in section 26 may be granted shall not exceed one-half of one per cent of the total area of the land planted with tea in British India on the 31st day of March 1938

Limitations to the extension of tea cultivation

(2) Subject to the provisions of section 29 and section 30 the total area of land in any Province in respect of which such permissions may be granted shall be determined by the Committee and shall be as near as may be one-half of one per cent of the total area in the Province which was planted with tea on the 31st day of March 1938

(3) The Committee shall publish the total areas so determined for the various Provinces by notification in the official Gazette of the Central Government as soon as may be after the commencement of this Act

(4) The Committee shall grant permission for planting new areas to the tea estates in accordance with rules to be prescribed upto a total area in each province as may be determined under sub clause (3), provided that permission shall be granted to extend an existing area planted with tea only to a tea estate of which the total existing area planted with tea does not exceed 300 acres where the estate is owned by a limited liability company, or 150 acres where it is owned by any individual proprietor or proprietors

Provided that the Committee shall also be empowered to grant extensions for the Tocklai and Nellakotta experimental stations

28 (1) Applications for permission to plant tea on any land not planted with tea on the 31st day of March, 1938, shall be made to the Committee not later than six months from the commencement of this Act and shall contain a clear statement of all special circumstances justifying the application

(2) Subject to the limits laid down in section 27, the Committee may grant or refuse the permission applied for or may grant it in part only, or may call for further information from the applicant

(3) No order by the Committee under sub-section (2) shall be called in question by any Court

Grant of permission to plant tea in special circumstances 29 (1) Where any land which was on the 31st day of March, 1933, planted with tea—

(a) has since become wholly incapable of carrying tea through subsidence, flood, erosion, earthquake or other irresistible superhuman cause, or

(b) has since been compulsorily acquired under the provisions of the Land Acquisition Act, 1894,* or of any other law for the time being in force and no longer carries tea

the owner of the tea estate in which such land was situated may apply to the Committee for permission to plant tea on land not planted with tea

(2) Upon such application being made and upon proof to the satisfaction of the Committee that the applicant is entitled to the benefit of sub section (1), the Committee may grant permission to plant tea on land not planted with tea

Provided that the area of land in respect of which such permission is granted shall be within the area of the same tea estate and shall not exceed in extent the area of the land incapable of carrying tea or compulsorily acquired, as the case may be

(3) All areas of land in respect of which permission to plant tea is granted under this section shall be excluded when computing for the purposes of section 27 the total area of land in respect of which the permissions referred to in section 26 may be granted

* I of 1894

30 (1) Subject to the provisions of sub section (4), the owner of a tea estate may establish nurseries on land not previously planted with tea for the growing of plants intended for in filling or supplying vacancies or for replanting land planted with tea within the area of the estate or for any other purpose approved by the Committee

Tea nurseries
Provided that the total area utilised for nurseries in British India shall not upon the 31st day of March 1943 exceed the area so utilised in British India on the 31st day of March 1933

(2) All areas of land utilised for nurseries in accordance with this section shall be excluded when computing for the purposes of section 27 the total area of land in respect of which the permissions referred to in section 26 may be granted

(3) The Committee may at any time serve by post a notice upon the owner of any tea estate or upon his manager requiring him to furnish within such period not being less than thirty days as may be specified in the notice such returns relating to the area of the land utilised for nurseries as it may deem necessary

(4) If any return required under sub section (3) is not furnished to the Committee within the period specified in the notice or in the opinion of the Committee the total area of the land utilised for nurseries is excessive, the Committee may make such restrictive or other order as it deems necessary and in particular may order the uprooting of any bushes planted on any such land

31 (1) Any applicant aggrieved by an order of the Committee under section 28 section 29 or section 30 may appeal to the Provincial Government within sixty days from the date thereof and the Provincial Government may cancel modify or suspend any such order

Appeal to Provincial Government
(2) The records of the Committee relating to proceedings under this Chapter shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Provincial Government

32 (1) The Committee may at any time serve by post a notice upon the owner of any tea estate or upon his manager requiring him to furnish within such period not being less than thirty days as may be specified in the notice such returns relating to the cultivation of tea on the estate as it may deem necessary

Power of the Committee to call for returns and to inspect
(2) Any member of the Committee and any officer of the Committee or person authorised by it in this behalf may at any reasonable time enter upon and inspect the lands of any tea estate and may require the owner of the estate to produce for inspection any records of the estate in his control or custody relating to the cultivation of tea on the estate

(3) Where any return required under sub section (1) in respect of any tea estate is not furnished to the Committee within the period specified in the notice the Committee may refuse to grant any permission under section 28 to plant tea on that estate

CHAPTER IV

PENALTIES AND PROCEDURE

33 A breach of the provisions of sub section (1) or sub section (2) of section 19 shall be punishable as if it were an offence under Item No 8 of section 167 of the Sea Customs Act, 1878,* and the provisions of section 168 and of Chapter XVII of that Act shall apply accordingly

34 Any owner of a tea estate or his agent or manager who has furnished any return under sub section (1) of section 20, or under sub section (3) of section 30 or under sub-section (1) of section 32 containing any particular which is false and which he knew to be false or did not believe to be true shall be punishable with fine which may extend to one thousand rupees

35 Whoever obstructs any member or officer of the Committee or any person authorised by the Committee while such member, officer or person is entering upon or inspecting the lands of any tea estate under sub section (2) of section 32, and whoever, having control over or custody of any records of a tea estate relating to the cultivation of tea on that estate, refuses or fails to produce such records when required by a member or officer of the Committee or by a person authorised by the Committee under that sub section shall be punishable with fine which may extend to one thousand rupees

36 (1) Whoever knowingly plants tea or causes tea to be planted in any land in contravention of section 26 shall be punishable with fine which may extend to one thousand rupees for the first offence, and with fine which may extend to five thousand rupees for any subsequent offence

(2) Whoever uses any land in contravention of any order made by the Committee under section 30 or fails to comply with any order made by the Committee under sub section (4) of section 30 shall be punishable with fine which may extend to one thousand rupees

37 Where any person has been convicted of any offence under section 36, the convicting Court may direct that the tea in respect of which the offence was committed shall be removed from the land within a specified time and in the event of the order not being duly complied with, may cause the tea to be removed and may recover the cost from the person convicted as if it were arrears of land revenue due on the tea estate on which the offence was committed

38 (1) No Magistrate other than a Magistrate of the first class shall take cognizance of an offence under section 34 section 35 or section 36 and such Magistrate may take cognizance of an offence only upon complaint made by a person authorised by the Committee and with the previous sanction of the Central Government, where the offence is that of furnishing a false return under sub-section (1) of section 20, and of the Provincial Government in any other case

30 (1) Subject to the provisions of sub section (4), the owner of a tea estate may establish nurseries on land not previously planted with tea for the growing of plants intended for in-filling or supplying vacancies or for replanting land planted with tea within the area of the estate or for any other purpose approved by the Committee

Tea nurseries
Provided that the total area utilised for nurseries in British India shall not upon the 31st day of March 1943, exceed the area so utilised in British India on the 31st day of March, 1933

(2) All areas of land utilised for nurseries in accordance with this section shall be excluded when computing for the purposes of section 27 the total area of land in respect of which the permissions referred to in section 26 may be granted

(3) The Committee may at any time serve by post a notice upon the owner of any tea estate or upon his manager requiring him to furnish within such period not being less than thirty days as may be specified in the notice such returns relating to the area of the land utilised for nurseries as it may deem necessary

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(2) The Committee shall be responsible for the conduct of all prosecutions of offences under section 34, section 35 and section 36

CHAPTER V

SAVINGS.

39 Notwithstanding the expiry of the Indian Tea Control Act, 1933,* and notwithstanding the provisions of sub-section (2) of section 9 of that Act,—

Savings

(a) the unexpended balance of fees received by the Indian Tea Licensing Committee constituted under that Act shall not lapse to Government but shall be transferred to the Indian Tea Licensing Committee as constituted under section 3 of this Act,

(b) until provision is otherwise made under the corresponding provisions of this Act, all fees fixed, all licences and permits issued and all quotas allotted under the Indian Tea Control Act, 1933,* shall, unless inconsistent with the provisions of this Act, be deemed to have been fixed, issued or allotted under this Act, and

(c) any offence punishable under the Indian Tea Control Act, 1933,* shall be punishable and may be dealt with as if it were an offence punishable under the corresponding provision of this Act,

and anything done before the 31st day of March, 1938, by the Indian Tea Licensing Committee constituted under the Indian Tea Control Act, 1933,* with a view to the allotment to tea estates of export quotas under and in accordance with this Act, shall so long as it is not inconsistent with any of the provisions of this Act, be as valid as if it had been done after this Act came into force

THE SCHEDULE

(See section 14)

Crop Basis mentioned in section 14 (2) of the Act will include the following —

(1) The Crop Basis of a tea estate for each financial year shall on and from the 1st April 1938 be the crop basis which was generally used for such tea estate for the financial

in the prescribed manner

(3) Allowances for low producing areas as may be determined in the prescribed manner

(XXII OF 1932)

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THE SCHEDULE — *Repealed*

THE TEA DISTRICTS EMIGRANT LABOUR ACT, 1932.

(ACT NO XXII OF 1932)

(Received the assent of the Governor General on the 8th October, 1932)

An Act to amend the law relating to emigrant labourers in the tea districts of Assam

WHEREAS it is expedient to amend the law relating to emigrant labourers in the tea districts of Assam, It is hereby enacted as follows

which regulates emigration to
mainly to regulate the rec
been possible for some years
and in consequence of this
and other changes the land is entirely unsuited to present conditions Attempts were
made by amending Acts in 1908 1915 and 1927 to adopt the Act to meet altering condi
tions substantial parts of it have been repealed and large numbers of rules have been
framed in the endeavour to use the Act to regulate the recruitment of emigrants who are
subject to no indenture These changes have proved inadequate and they have made the
law extremely confused Large parts of the surviving provisions of the Act have become
completely ineffective and those provisions which are operative are open to weighty criti
cisms

2 In 1926 the Government of India addressed the Local Governments mainly con
cerned suggesting that the time might have come for the abolition of all control over
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ber 1928 By the time criticisms of it had been received the Royal Commission on Labour
had been appointed and a decision was deferred until they had reported They collected
a large amount of evidence on the subject and devoted chapter XX of their report to a
discussion of it As a result they recommended the replacement of the existing legisla
tion by a new enactment The Bill follows the scheme prepared by the commission
whose recommendation have been varied in respect of minor details and supplemented
where necessary

3 The first object of the Bill is to make it possible on the one hand to exercise

dispense with all control This ideal has recently been endorsed by both the Royal
Commission on Agriculture and the Royal Commission on Labour It is desirable
therefore that the provisions relating to control should be sufficiently elastic to allow of
their complete or partial relaxation as and where this is required and sufficiently wide
to deal with any possible recrudescence of recruiting abuses The Bill proposes
that Local Governments should be able subject to the control of the Government
of India to impose control over the forwarding of assisted emigrants (clause 16 and
Chapter III generally) or over both the recruitment and their forwarding (clauses
16 and 26 and Chapters III and IV generally) as occasion may dictate Under the
former system assisted emigrants will ordinarily be forwarded through licensed
local agents in the recruiting districts (clauses 17 18) by prescribed routes (clause 19)
on which provision for food shelter etc, must be made by employers and medical super
vision can be exercised (clauses 20 34 36 and 37 (4)) Only employers who make

the right to be repatriated from Assam (Chapter II) with the dependants (clause 9) at
the employer's expense (clause 12) Ordinarily his right will accrue after three years

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proposal to appoint a Controller of Immigrant Labour with some staff and possibly a Deputy Controller (clause 2). The charges will be met by the tea industry through a cess of somewhat similar character to that raised under the present Act for the Assam Labour Board (clause 5). The controller is intended to be an officer subject to the Government of India and responsible for—

- (c) supervising conditions in the recruiting provinces where his powers will be limited to inspection and advice (clauses 4, 17 (3) executive action being entrusted to the local authorities (Chapters III and IV))

He should thus be able to secure the proper co-ordination of the whole system and to advise regarding possible relaxations of control under the Act if required. It is intended that with the appointment of the controller, the Assam Labour Board which has since 1915 exercised some supervision, without executive authority, in the recruiting provinces should be abolished.

6 Apart from the main changes proposed in the law and explained above, the Bill involves a number of minor alterations in the present position.

- (4) The bill is not limited in its application to certain provinces [clause 1 (2)] So to limit it would involve the limitation of repatriation rights to emigrants from these provinces while its general extension does not render obligatory the extension of control to areas at present uncontrolled.

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- (h) It is proposed that it should be possible to detain and return at the employer's expense sick persons emigrating from any province (clause 31)
- (i) The provisions of the Bill are intended to apply only to emigration for work on

CHAPTER I

PRELIMINARY.

Short title, extent and commencement

1 (1) This Act may be called the
Tea Districts Emigrant Labour Act, 1932.

(2) It extends to the whole of British India, including the Santhal Parganas

(3) It shall come into force on such date as the [Central Government]* may, by notification in the [official Gazette]* appoint

Notes — We consider that it is preferable at once to include the Santhal Parganas which is a recruiting area of some importance. With reference to sub clause (3) we are anxious that the Act should be put into operation as soon as possible. We are satisfied with the assurance given by the Honourable Member for Industries and Labour that Government will expedite as far as possible the bringing into force of the Act "—*Report of the Select Committee*

* Substituted by C. T. O'Shea at 10:37

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(a) "tea district" means any of the following districts in the province of Assam, namely:—

Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Golpara, Cachar and Sylhet, and the Balipara Frontier Tract,

(b) "tea estate" means an estate, situated in the tea districts, any part of which is used or is intended to be used for the cultivation or manufacture of tea or for any purpose connected therewith,

(c) "recruiting province" means any province other than Assam,

(d) "adult" means a person who has completed his sixteenth year, and "child" means a person who is not an adult,

(e) a "labourer" means an adult working on wages not exceeding fifty rupees a month, but does not include a clerk or domestic servant, or a mechanic carpenter, mason, bricklayer or other artisan,

(f) an "assisted emigrant" means an adult who, after, the commencement of this Act, has left his home in any recruiting province or in any Indian State is proceeding through any part of British India to any place in Assam to work as a labourer on a tea estate and has received assistance from any person

but does not include any person who at any time within the two preceding years has worked as a labourer on a tea estate,

(g) "assistance" means the gift or offer of any money, goods or ticket entitling to conveyance to any person as an inducement to such person to proceed to Assam to work as a labourer on a tea estate, and "assisted" and "with assistance" when used with reference to any person mean that such person has received assistance,

(h) an "emigrant labourer" means a person who has last entered Assam as an assisted emigrant and is employed on a tea estate,

and includes any person who having accompanied an assisted emigrant to Assam as a child dependent on him, has become an adult and is so employed,

but does not include any person who, at any time after his last entry into Assam and after he has become an adult has taken employment not on a tea estate,

(i) the "family" of any person includes the following if living with him, namely,—

(i) in the case of a male,—his wife and any child and aged or incapacitated relative dependent on him,

(ii) in the case of a married woman,—her husband and any child and aged or incapacitated relative dependent on her or on her husband, and

(iii) in the case of any other woman,—any child and aged or incapacitated relative dependent on her,

and in the case of an emigrant labourer, includes any person who having accompanied him to Assam as a child dependent on him, has become an adult and is living with him,

(j) "employing interest" means any employer of labourers or any group or association of such employers, and

(k) "prescribed" means prescribed by the rules made by the [Central Government] *

Notes—Section 2 (1)—We have inserted the *Islipara* frontier tract among the tea districts as we understand there is at least one tea garden in that tract.

(1) We have somewhat extended the scope of this definition. The words omitted seemed to us likely to give rise to difficulty in interpretation.

(2) We have revised this definition to avoid the danger of the whole period of the sixteenth year of a person being excluded in the case of both an adult and a child.

(3) We have recast this definition in the interest of clarity.

(4) and (5)—A separate definition has been provided for assistance which is used in the Bill as revised both with reference to emigrants as defined hereunder the title 'assisted emigrants' and other persons such as those referred to in clauses 31 and 35 who do not come within the definition now provided for 'assisted emigrant'. The definition of 'assisted emigrant' has been widened to cover persons who have already worked on tea estates in Assam provided that they have been absent from Assam for more than two years.

(6) The omission in this definition is intended to insure that a person who takes up other employment on a tea garden such as that of a domestic servant or mechanic does not thereby lose his status as an emigrant labourer. The other alteration in the definition are consequential upon the change made in (1) and (2).

(7) The omission of the word 'emigrant' is intended to avoid the difficulty arising from the fact that 'emigrant labour' is a technical term with special meaning in this Act so that until persons had emigrated under the Act to tea gardens there might be no employing interests.—*Report of the Select Committee*

Appointment and status of Controller and Deputy Controllers

3 (1) The [Central Government]* may appoint a person to be Controller of Emigrant Labour, to exercise the powers

and discharge the duties conferred and imposed upon the Controller by or under this Act.

(2) The [Central Government]* may also appoint one or more Deputy Controllers of Emigrant Labour, who shall exercise such of the powers and discharge such of the duties of the Controller as the [Central Government]* may determine.

(3) The controller may, from time to time and subject to the control of the [Central Government],* make a distribution of work as between himself and the Deputy Controllers.

(4) The Controller and Deputy Controllers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Notes—
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Powers of the Controller

4 The Controller shall have power—

(a) to enter—

(i) all open places on a tea estate,

(ii) any enclosed place on a tea estate where he knows or has reason to believe emigrant labourers are working or are accommodated

(iii) any office of a tea estate,

(iv) any office or depot maintained by a labour recruiting agency, in Assam or in a recruiting province,

(v) any train, vessel or vehicle which he knows or has reason to believe is being used for the conveyance of assisted emigrants,

(b) to inspect, in any office or depot mentioned in sub-clauses (iii) and (iv) of clause (a), any register or other document required to be kept under this Act,

(c) to carry out in any place mentioned in clause (a) any

* Substituted by G. I. Order of 1937.

which he may deem to be expedient for carrying out the purposes of this Act, and

(d) to do any other reasonable act which may be expedient in the discharge of his duties.

Notes — We have omitted words in sub clause (a) which appear to us unnecessary. The other changes are aimed at meeting a criticism made for the draft Bill by the High Court of Lahore and the Punjab Government — *Report of the Select Committee*

5 (1) In order to meet expenditure incurred in connection with the Controller, the Deputy Controllers and their staff, or under this Act an annual cess shall be levied, to be called the Emigrant Labour Cess

(2) It shall be paid in respect of the entry into Assam of each assisted emigrant and shall be payable by the employing interest on whose behalf he was recruited

(3) It shall be levied at such rate, not exceeding nine rupees, for each emigrant as the [Central Government]* may by notification in the [official Gazette]* determine for the year of levy

(4) The proceeds of the cess shall be credited to a fund to be called the Emigrant Labour Fund, to be administered by the [Central Government]*

Notes — We have altered the provisions regarding the cess to make the cess payable in respect of each assisted emigrant as now defined. The number of such assisted emigrants will be larger than the number of emigrants and we are advised that the maximum rate now to facilitate administration we have provided entry of the emigrant — *Report of the Select Committee*

6 (1) The [Central Government]* may by notification in the [official Gazette]*, make rules—

(a) prescribing the agency which shall collect the Emigrant Labour Cess,

(b) prescribing the returns to be submitted to such agency by employers of emigrant labourers, and by persons who recruit or forward emigrant labourers and the form and date of such returns,

(c) regulating the procedure of the collecting agency,

(d) prescribing the mode of payment of the cess,

(e) determining the date when any sum payable as cess shall be an arrear

(f) declaring that an arrear of cess may be recovered as an arrear of land revenue and prescribing the procedure to be followed to secure such recovery and

(g) generally, to secure the equitable collection of the cess

CHAPTER II

REPATRIATION

7 Every emigrant labourer, on the expiry of three years from the date of his entry into Assam, shall have the right of repatriation as against the employer employing him at such expiry

General right of repatriation after three years in Assam

* Substituted by G. I. Order of 1937

8 (1) Any emigrant labourer who, before the expiry of three years from his entry into Assam, is dismissed by his employer otherwise than for wilful and serious misconduct, shall have the right of repatriation against such employer

(2) Where any emigrant labourer is dismissed by his employer before the expiry of three years from his entry into Assam, and his employer refuses or fails to repatriate him, the labourer may apply to the Controller, and the Controller, after such inquiry as he may think fit and after giving the employer an opportunity to be heard, may declare that the labourer has the right of repatriation against such employer

9 (1) Where an emigrant labourer other than a married woman living with her husband and having no child living with her dies within three years of his entry into Assam, the family of such labourer shall be entitled to be repatriated by the employer last employing him

(2) Where such deceased labourer leaves a widow, she shall be deemed to be an emigrant labourer in whom a right of repatriation has arisen

(3) Where there is no such widow, the Controller shall have all powers necessary to enforce the rights of the family under this section, and may take such action as he may deem to be expedient in their interests

Notes.—The amendment is designed to secure that on the death of a married woman leaving a husband and children on the garden the family will be able to secure repatriation.—*Report of the Select Committee*

10 (1) An emigrant labourer may, before the expiry of three years from his entry into Assam, apply to the Controller for a declaration of his right to repatriation on any of the following grounds, namely,—

(a) that his state of health makes it imperative that he should leave Assam, or

(b) that his employer has failed to provide him with work suited to his capacity, at the normal rate of wages for that class of work, or

(c) that his employer has unjustly withheld any portion of any wages due to him, or

(d) any other sufficient cause

(2) An emigrant labourer may, before the expiry of one year from his entry into Assam, apply to the Controller for a declaration of his right to repatriation on any of the following grounds, namely,—

(a) that he was recruited by coercion, undue influence, fraud or misrepresentation, or

(b) that he was recruited otherwise than in accordance with the provisions of this Act and the

(3) The Controller, after such inquiry as he may think fit and after giving the employer an opportunity to be heard, may declare that an emigrant labourer applying under clause (d) has a right of repatriation against his employer

Provided that

clause (d) is

section (1) may be made by the Controller only and not by any other officer exercising the powers of the Controller by or under this Act

Notes—‘Section 15 (1) (6)—The amendment is aimed at preventing a labourer from being compelled to work on less than the ordinary wages. *Clause (d)*—We consider that it is not possible to provide specifically for all the grounds which might warrant repatriation and that cases of serious hardship may arise which do not satisfy the criteria given

Select Committee

11 Where any employer of an emigrant labourer, or any agent of such employer in authority over such labourer, is convicted of any offence committed against such labourer and punishable under Chapter XVI of the Indian Penal Code* with imprisonment for one year or upwards, the convicting Court or the Appellate Court or the High Court when exercising its powers of revision may declare that such labourer has a right of repatriation against such employer

12 (1) When an emigrant labourer has a right of repatriation against any employer, the employer or his agent shall defray the cost of the return journey of the emigrant labourer and his family from the station nearest the employer's tea estate to the home of the labourer and shall provide subsistence allowances on the prescribed scale for such labourer and his family for the time requisite for him and his family to travel from such estate to his home

Provided that where the emigrant labourer is a married woman living with her husband who is also an emigrant labourer, her right of repatriation shall extend only to herself and

married woman living with her husband is entitled to be treated as a member of his family notwithstanding that she is herself an emigrant labourer

(2) In the event of any dispute regarding the cost of the return journey or subsistence allowances, the question shall be referred for decision to the Controller

Notes—‘We have revised the clause to ensure to the emigrant labourer the cost of his journey to his home instead of to the station nearest to the place where he was recruited’—*Report of the Select Committee*

13 (1) Within fifteen days from the date on which a right of repatriation arises to an emigrant labourer, or within such shorter period as the authority declaring such right may determine, the employer concerned shall, subject to any agreement under section 14 make all necessary arrangements for the homeward journey of the labourer and his family, and shall despatch them on their journey

Provided that an employer shall not be required to make such arrangements for or any payment in respect of any adult person who does not wish to leave Assam

(2) Where an employer fails to comply with the provisions of sub-section (1), the right of repatriation of the emigrant labourer concerned shall not be affected but the employer shall be liable to pay to the labourer one rupee for each day on which he is in default

Provided that on application made to him by either party the Controller may direct that the labourer shall be paid at a lower rate than one rupee a day or at a higher rate not exceeding two rupees a day and may also determine the number of days being a reasonable number regard being had to all the circumstances of the case for which the payment shall be made

14 (1) An emigrant labourer may by agreement with his employer postpone his exercise of the right of repatriation, or may waive it conditionally or unconditionally, but no such agreement shall be valid unless it is in writing and in the prescribed form and has been made not more than one month before the right of repatriation arises

Provided that the [Central Government]* may, by notification in the [official Gazette]* make rules requiring that in any area such agreement shall be made in the prescribed manner before a prescribed authority and that the prescribed authority if satisfied that the labourer understands the terms of his agreement and his rights in regard to the agreement

rules come into force no such agreement shall be made and ratified

(2) When an emigrant labourer having a right to repatriation fails without reasonable cause to proceed on his homeward journey at the time arranged by his employer the employer may notify the Controller of such failure and the Controller after such inquiry as he may think fit and after giving the labourer an opportunity to be heard, may declare that the labourer has forfeited his right of repatriation, and such labourer shall not be entitled to repatriation again as against any employer, save by an order of the Court under section 11

15 (1) Where the Controller, on information obtained from any source and after such inquiry as he may think fit and after giving the employer concerned an opportunity to be heard, is of opinion that an emigrant labourer is entitled to repatriation under any of the provisions of this Chapter or is entitled to the payment of any sum of money under the provisions of sub-section (2) of section 13 the Controller may direct the employer concerned to despatch such labourer and his family or to pay him the sum of money within such period as the Controller may fix.

(2) If the employer fails to comply with such direction, the Controller may repatriate the labourer and his family or pay him

* Substituted by G. I. Order of 1937

sum of money out of any funds at the Controller's disposal, and shall recover the costs incurred from the employer

(3) For the purposes of such recovery the Controller may certify the costs to be recovered to the Collector, who shall recover the amount and may recover it as an arrear of land revenue

(4) The Controller shall have similar powers in regard to any person in Assam who he knows or has reason to believe is a member of the family of a repatriated emigrant labourer who should have been repatriated along with such labourer

Notes —Section 15 (2)—“We consider that in the interests of an Emigrant Labour Fund and of employers in general there should be an obligation on the Collector to recover cost incurred under this section from the employer who is at fault”—*Report of the Select Committee*

CHAPTER III

CONTROLLED EMIGRATION AREAS

16 [(1) The Central Government may, by notification in the official Gazette, declare any area within a recruiting Province to be a controlled emigration area and thereupon the provisions of this Chapter shall apply to that area

Power to declare controlled emigration area

Provided that the Central Government may, by the same or any subsequent notification, declare that any of the provisions of this Chapter shall not apply in that area, or shall apply subject to such general or special relaxations as may be specified]*

(2) A notification under sub-section (1) shall be expressed to take effect from a date not earlier than two months from the date of its publication, and during the said two months licences may be granted under section 17 and such licences shall be dated as being granted on the date on which the notification takes effect and shall not be valid until that date

17. (1) The [Central Government]*, or any District Magistrate empowered by it in this behalf, may grant a licence to any person to act as local forwarding agent in any part of a controlled emigration area, on behalf of an employer or employers of labourers

Power to grant licences to local forwarding agents

(2) Such licences shall be granted only on the application of an employing interest

(3) No such application shall be entertained unless the Controller has certified that the employing interest making the application has made proper provision, in accordance with section 20 and rules made under section 21, for the forwarding accommodation and feeding of assisted emigrants on their journey to the tea estates on which they are to be employed

(4) A local forwarding agent may be granted separate licences on applications by separate employing interests

Notes — In the Bill as drafted a ... shall be cancelled
without the employing interest's consent
consider that Local Governments should
behalf of an employer guilty of any offence
under 21 have this object — *Report of the Select Committee*

* Substituted by G. I. Order of 1937

18 (1) Whoever arranges with any person in a controlled emigration area that such person shall proceed to Assam with assistance, shall take or send such person, along with the members of his family who are to accompany him to Assam, to the depot of a local forwarding agent licensed for the area in which the arrangement was made unless the arrangement was made at such a depot

(2) Whoever arranges with any person in an Indian State that such person shall proceed to Assam with assistance and brings or sends such person and any of the members of his family into any controlled emigration area, shall take or send such person and members to the depot of a local forwarding agent licensed for that area

(3) At every such depot proper arrangements shall be made for the accommodation and feeding of assisted emigrants and their families

Notes — We have revised this clause so that it now covers not only assisted emigrants but also persons who because they have been in Assam within the two preceding years do not come within the class of assisted emigrants. For purposes of check in the interest of these persons themselves it is desirable that they should be produced at the depots of forwarding agents when on their way to Assam. It is not contemplated that they should be subject to the provisions of the Act relating to assisted emigrants in other respects. — *Report of the Select Committee*

19 An assisted emigrant and his family shall be forwarded to Assam from the depot of a local forwarding agent by such agent and only by such routes and in such manner as may be prescribed by rules made under section 37, and shall be accompanied on their journey by a competent person deputed by the local forwarding agent

20 Every employing interest which recruits labour in a controlled emigration area shall maintain or have the right to use depots at reasonable intervals on the prescribed routes by which it forwards assisted emigrants to Assam, for the accommodation and feeding of assisted emigrants and their families

21 (1) The [Central Government]* may by notification in the [official Gazette] * make rules—

(a) prescribing the form and particulars of licences to be granted to local forwarding agents and the annual fees not exceeding ten rupees which may be levied from persons holding such licences,

(b) prescribing returns relating to assisted emigrants and their families which shall be made by local forwarding agents and the registers and the form thereof which shall be maintained by such agents,

(c) prescribing the scales of diet which shall be provided for assisted emigrants and their families at depots

(d) prescribing the accommodation which shall be provided for assisted emigrants and their families at depots and the sanitary and medical arrangements at such depots

(e) providing for detention, for a period not exceeding 14 days at depots of local forwarding agents of women unaccompanied

their husbands who propose to proceed to Assam as assisted emigrants,
 es,
 ich shall be supplied by
 regarding the conditions of
 life and work on tea estates and the methods in which it shall be
 supplied,

(g) providing for any other matter which in the opinion of the
 [Central Government]* may be required to give effect to the provi-
 sions of this Chapter

(2) In making rules under clause (b), clause (c), clause (f) or clause
 (g) of sub section (1) the [Central Government]* may provide that a
 contravention thereof shall be punishable with fine which may extend
 to one hundred rupees

Notes—*Sub clause (b)*— Our amendment indicates that the returns to be kept shall
 relate only to the special class of assisted emigrants dealt with by the Bill

Sub clause (c)— We have confined the scope of this sub clause to women who are
 unaccompanied by their husbands and are proceeding as assisted emigrants

Sub clause (f)— This sub clause has been provided as an insurance against assisted
 emigrants being left in ignorance of the conditions of life and work to which they are
 going —*Report of the Select Committee*

22 (1) The Civil Surgeon the District Magistrate or the Sub-
 Divisional Magistrate, or any Magistrate
 Inspection of depots vessels and vehicles or Police-officer not below the rank of
 Inspector, deputed by the District Magis-
 trate or the Sub-Divisional Magistrate may enter a local forwarding
 agent's depot, or any depot maintained by an employing interest on a
 prescribed route to Assam, and inspect the accommodation feeding
 arrangements, and sanitary arrangements provided for assisted
 emigrants and their families and all registers and other documents
 required to be maintained or kept by or under this Act and shall
 record the results of such inspection in a book to be kept in such
 depot for the purpose

(2) The Civil Surgeon or such Magistrate or person deputed may
 also enter and inspect any vessel, train or vehicle on which assisted
 emigrants are travelling, or on which he has reason to believe that any
 assisted emigrant is travelling whether along a prescribed route or not

Notes— We consider that the Civil Surgeon should also have powers under this
 clause and we think it desirable that the results of all inspections made should be
 recorded —*Report of the Select Committee*

23 If the [Central Government]* is satisfied that an employing
 interest recruiting assisted emigrants in a
 controlled area is not making proper provi-
 sion for the forwarding accommodation or
 feeding of such emigrants and their
 families on their journey to Assam [the Central Government may]*
 direct all District Magistrates concerned to cancel or suspend all
 licences under section 17 held by local forwarding agents on behalf
 of such employing interest

Provided that the [Central Government]* shall not [direct the
 cancellation of any]* licences under this section until he has given
 the employing interest concerned an opportunity to submit its
 explanation

24 (1) The [Central Government]* may cancel wholly or in part any licence granted to a local forwarding agent, and a District Magistrate may cancel wholly or in part any licence granted by him to a local forwarding agent,—

(a) if in the opinion of the [Central Government]* or of the District Magistrate, as the case may be, such agent has been guilty of misconduct or wilful default or negligence in the discharge of the duties imposed upon him by or under this Act or

(b) if the employing interest, on whose application the licence was granted, has applied to the [Central Government]* or to the District Magistrate, as the case may be, for the cancellation of the licence, or

(c) if in the opinion of the [Central Government]* or of the District Magistrate, as the case may be, the employer on whose behalf the licence was granted is guilty of misconduct, or wilful default or negligence in the discharge of duties imposed upon him by or under this Act

Provided that no licence shall be cancelled under clause (a) until the holder thereof has or under clause (c) until the holder thereof and the employer concerned have had an opportunity to show cause against the cancellation

Provided further that a cancellation under clause (c) shall, where the agent is licensed to act on behalf of more than one employer, operate only to prevent the agent from acting on behalf of the employer held guilty

(2) A local forwarding agent whose licence has been cancelled by a District Magistrate under clause (a) of sub section (1) or any employing interest on whose behalf he acts, may within three months from the date of the District Magistrate's order appeal to the [Central Government]* whose decision shall be final

25 Where any person who is required to be taken or sent to a local forwarding agent's depot in any district under section 18 leaves that district on his journey to Assam without being so taken or sent or, being an assisted emigrant proceeds to Assam otherwise than in accordance with section 19, or by any route other than a route prescribed under section 37 any person who abets him in so leaving the district or in so proceeding to Assam, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees or with both

CHAPTER IV

RESTRICTED RECRUITING AREAS

26 [(1) The Central Government may by notification in the official Gazette, declare any controlled emigration area or any part of a controlled emigration area within a recruiting Province to be a restricted recruiting area and thereupon the provisions of this Chapter shall apply to that area

* Substituted by G. I. Order of 1937

Provided that the Central Government may, by the same or any subsequent notification, declare that any of the provisions of this Chapter shall not apply in relation to that area, or shall apply subject to such general or special relaxations as may be specified]*

(2) A notification under sub-section (1) shall be expressed to take effect from a date not earlier than two months from the date of its publication, and during the said two months licences may be granted under section 27 or certificates may be granted and endorsements made under section 28, and such licences, certificates and endorsements shall be dated as being granted or made on the date on which the notification takes effect and shall not be valid until that date

Notes — Having regard to the recommendation of the Royal Commission on Labour we consider that this Chapter should not come into force without the previous sanction of the Governor General in Council — *Report of the Select Committee*

27. (1) Subject to rules made under sub-section (2) and sub-section (3), the District Magistrate may grant a licence to any person to act as recruiter in the whole or any part of his district

(2) The [Central Government]* may, by notification in the [official Gazette]* make rules, prescribing the qualifications for persons who may be granted licences under this section

(3) [The Central Government]* may, by notification in the [official Gazette],* make rules [as respects any restricted recruiting area]†—

(a) regulating the procedure of the District Magistrate in granting such licences,

(b) prescribing the form and particulars of such licences and the fees, not exceeding ten rupees, to be paid therefor

Notes — We consider that the rules to be made under sub-section (2) should be made by Governor General in Council rather than by the Local Government as it is preferable that there should be some uniformity in the matter — *Report of the Select Committee*

28 (1) Subject to rules made under sub-section (2), the owner or manager of a tea estate may grant a certificate to any person employed on such estate as a labourer or in a position of supervision or management empowering him to recruit labour for such estate in the whole or any part of a restricted recruiting area, and such person shall thereupon be entitled to recruit labour for such estate as a garden-sardar in the area specified

Provided that [the Central Government]* may, by notification in the [official Gazette]* make rules [as respects any restricted recruiting area]† directing that certificates of garden-sardars or of specified classes of garden sardars shall not be valid in any district in any such area until they have been endorsed as valid for that district by the District Magistrate or a Magistrate authorised by the District Magistrate in this behalf

(2) The [Central Government]* may make rules [for Assam]†

* Substituted by G. I. Order of 1937

† Inserted by G. I. Order of 1937

(a) regulating the procedure of owners and managers in granting and withdrawing such certificates

(b) prescribing the form and particulars of such certificates

29 The District Magistrate may for reasons to be recorded by him cancel or suspend the licence of a recruiter on the ground of his misconduct or wilful neglect or default in the discharge of the duties imposed on him by or under this Act

Provided that no licence shall be cancelled under this section until the holder thereof has had an opportunity of showing cause against the cancellation

30 (1) The District Magistrate of any district in respect of any part of which a garden sardar holds a certificate may cancel the certificate if he is satisfied that the garden-sardar has contravened any of the provisions of this Act or of the rules made thereunder

(2) A District Magistrate cancelling a certificate under sub-section (1) shall record his reasons, and shall send intimation of his action to the District Magistrate of every other district in respect of any part of which the certificate was valid and to the person who granted the certificate

Notes — We consider that the reasons for refusing to endorse a certificate as valid or for cancelling or suspending a licence under sections 28, 29 and 30 should be recorded in writing — *Report of the Select Committee*

31 Whoever, not being a licensed recruiter holding a licence under section 27, or a garden-sardar holding a valid certificate under section 28 or a local forwarding agent holding a licence under section 17 in any part of a restricted recruiting area gives or offers any money or goods to any person, or defrays or offers to defray any travelling expenses of any person, as an inducement to such person to proceed to Assam as an assisted emigrant shall be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees, or with both

CHAPTER V SUPPLEMENTAL.

32 (1) No person shall in any way assist a child to proceed from any recruiting province to Assam to work in any capacity on a tea estate unless such child is accompanied by a parent or other adult relative on whom he is dependent and no person shall so assist a married woman who is living with her husband unless she is so proceeding with the consent of her husband

(2) Any person who knowingly contravenes the provisions of this section shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both

Notes — We have made a provision preventing a married woman from being recruited without the consent of her husband — *Report of the Select Committee*

33 (1) Where it appears to the Controller that any person proceeding

Power to detain and return
sick persons

ing to a tea garden with assistance or any member of the family of such person, is suffering from an infectious or contagious disease, or is not in a fit state of health to proceed on his journey, the Controller may—

(a) detain such person and his family,

(b) send the sufferer for medical treatment to a hospital or dispensary or other suitable place, and

(c) cause all necessary arrangements to be made for the accommodation and feeding of the other members of the party so detained,

and all arrangements for such detention and treatment shall be made by and at the cost of the employing interest on whose behalf such person was recruited

(2) Where it appears that a sufferer detained under sub section (1) is not likely to be in a fit state of health to proceed on his journey within a reasonable time, the Controller may direct that he and the other members of his party detained with him shall be returned to the home of the person proceeding with assistance by and at the cost of the employing interest on whose behalf such person was recruited

Power to return person im-
properly recruited

34 Where it appears to the Controller after such inquiry as he thinks fit to make that any person proceeding to a tea estate with assistance—

(a) has been recruited by coercion, undue influence fraud or misrepresentation, or

(b) has been recruited or forwarded otherwise than in accordance with the provisions of this Act and the rules made thereunder,

the Controller may direct that such person and his family shall if such person so desires be returned to his home by and at the cost of the employing interest on whose behalf he was recruited

35 (1) If an employing interest fails to make arrangements to

Power to enforce the provi-
sions of sections 33 and 34

the satisfaction of the Controller for the detention or treatment of any person detained under sub section (1) of section 33 the Controller may himself make such arrangements and defray the cost out of any funds at his disposal

(2) In making a direction under sub section (2) of section 33 or under section 34 the Controller may fix a period within which such person and family shall be forwarded by the employing interest concerned and shall send a copy of his direction to the employing interest concerned, and to the nearest agent, if any, of such employing interest in the province where such person then is

(3) If the employing interest fails to comply with the direction within the time fixed, the Controller may cause such person and his family to be returned to his home and defray the costs out of any funds at the Controller's disposal

(4) The Controller shall recover any costs incurred by him under this section from the employing interest concerned, and for the purposes of such recovery may certify the costs to be recovered to

the Collector of any district in which a tea estate belonging to the employing interest concerned or to any member thereof, is situated, and the Collector shall recover the amount and may recover it as an arrear of land revenue

(5) Any costs so certified may, where the employing interest concerned is a group or association of employers, be recovered from any one of such employers

Notes — We have amended sections 33, 31 and 35 so as to extend them to the wider class to which they apply. The amendments are also made in the sub-clause of section 35. —Report of the Select Committee

Magistrates and medical officers who may exercise the powers of the Controller

36 (1) Subject to the provisions of sub-section (3) of section 10, any District Magistrate in Assam may exercise in respect of his district any power which the

Controller by or under this Act could exercise in such district

(2) The Controller may transfer any proceeding under Chapter II pending before him to the District Magistrate having jurisdiction under sub-section (1) to dispose of it

(3) [The Central Government may invest a District Magistrate or Sub-Divisional Magistrate in any recruiting Province and a Sub-Divisional Magistrate in Assam]* with any of the powers of the Controller under section 4 or section 33 or section 34 or section 35 in respect of his district or sub-division as the case may be

(4) The [Central Government]* may invest any medical officer not below the rank of Assistant Surgeon with any of the powers of the Controller under section 33 and section 35

Section 36 (1) — A reference has been inserted to section 10 in view of the proviso added therein to sub-section (3). In sub-section (4) we have further defined the officers who may be invested with powers under this sub-section. —Report of the Select Committee

Power of Central Government to make rules

37 (1) The [Central Government]* may by notification in the [official Gazette]* make rules—

(a) regulating the procedure of the Controller and of persons exercising the powers of the Controller in the exercise of their powers under this Act

(b) where there are more authorities than one exercising any of the powers of the Controller in the same area regulating the exercise of their powers by such authorities

(c) prescribing scales of subsistence allowances for the purposes of section 12

(d) prescribing the form of agreements under section 14

(e) prescribing the routes by which assisted emigrants may be forwarded from districts in controlled emigration areas to tea districts

(f) prescribing the manner in which assisted emigrants and their families shall be forwarded to Assam from the depots of local forwarding agents

(g) prescribing the action to be taken by local forwarding agents and by persons in charge of depots on prescribed routes

an assisted emigrant or a member of his family appears to be suffering from infectious or contagious disease or where an assisted emigrant appears to have been recruited by coercion, undue influence, fraud or misrepresentation, or to have been recruited or forwarded otherwise than in accordance with the provisions of this Act and the rules made thereunder,

(h) directing that employers of emigrant labourers shall keep registers of such labourers and their families, and prescribing the form of such registers,

(i) directing that employing interests which recruit emigrant labourers shall keep registers of such labourers and their families, and of their journeys to, and from Assam, and prescribing the form of such registers,

(j) requiring employers of emigrant labourers and employing interests which recruit emigrant labourers to submit such return in respect of such labourers as the [Central Government]* may think expedient for carrying out the purposes of this Act, and

(k) generally, to carry out the purposes of this Act

(2) The [Central Government]* may, by notification in the [official Gazette]* make rules [for Assam]† requiring employers of labourers on tea estates to submit returns of wages and earnings of labourers employed by them

(3) [Rules made under this section]* may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees

Notes — 'We have inserted an additional provision to enable rules to be made preventing a conflict of jurisdiction' — *Report of the Select Committee* Sub section (1) (h) — 'The addition here made is designed to secure information bearing on the status of assisted emigrants' — *Report of the Select Committee*

38 (1) The [Central Government]* may, by notification in the [official Gazette,]* declare that the provisions of this Act shall apply in respect of any lands and premises in Assam other than tea estates, and thereupon the provisions of this Act shall apply in all respects to such lands and premises as if they were tea estates

(2) [The Central Government]* may, by notification in the [official Gazette]*, declare that the provisions of this Act shall apply in any area in Assam other than the districts specified in clause (a) of section 2, and thereupon the provisions of this Act shall apply in all respects to such area as if it were a tea district

Saving for acts done in good faith under the Act

39 No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act

Notes — 'We have introduced the usual protection for action taken in good faith' — *Report of the Select Committee*

Bar of jurisdiction of Civil Courts.

40 No Civil Court shall have jurisdiction—

(a) to deal with or decide any question which the Controller is, by or under this Act, empowered to deal with or to decide or

* Substituted by G. I. Order of 1937

† Inserted by G. I. Order of 1937

(b) to enforce any liability incurred under this Act

Repeal of Act VI of 1901
and certain consequences

41 —[*Repealed by Act 20 of 1937*]

[SCHEDULE—*Repealed by Act 20 of 1937*]

THE INDIAN TELEGRAPH ACT (XIII OF 1885)

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THE INDIAN TELEGRAPH ACT.*

(ACT XIII OF 1885.)

(Received the Governor-General's assent on the 22nd July, 1885)

An Act to amend the law relating to Telegraphs in India

[WHEREAS it is expedient to amend the law relating to Telegraphs in India, It is hereby enacted as follows —]*

PART I

PRELIMINARY.

Short title

† 1 (1) This Act may be called the Indian Telegraph Act, 1885.

"(2) It extends to the whole of British India, including the Santhal Parganas and the Pargana of Spiti and it applies also to—

Local extent

(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any [Indian State],† and

(c) all servants of the King, whether British subjects or not, within the territories of any [Indian State]†"§

Commencement

(3) It shall come into force on the first day of October, 1885.

Notes —
as amended
s 3 in UP
District by R
1916, s 2

by Reg 3 of 1872
ulation 2 of 1913,
s 4, in the Angul
Regulation 1 of

2 Repeal and savings — [Repealed by Act I of 1938].

Definitions

3 In this Act, unless there is something repugnant in the subject or context,—

(1) "telegraph" means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for "making, transmitting or receiving"§ telegraphic, telephonic or other communications by means of electricity, galvanism, or magnetism

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the [Central Government]|| or by a person licensed under this Act

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered.

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same.

* In Burma, the words "and" and "or" have been substituted by G. O. I. of 1937

so to—
Burma, and

† In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word "Government" vide G. B. Order of 1937

(5) "post" means a post, pole, standard, stay, strut, or other aboveground contrivance for carrying, suspending or supporting a telegraph line :

(6) "telegraph authority" means the Director-General of "Posts and" Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act

(7) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by [the Central or any Provincial Government]† with, the control or management of any municipal or local fund

Notes—The term 'telegraph' includes 'telephones' *A G v Edison Telephone Co of London* (1886), 6 Q B D 244, see also *Post Master-General v National Telephone Co Ltd* (1909), A C 269

PART II

PRIVILEGES AND POWERS OF THE GOVERNMENT

Exclusive privilege in respect of telegraphs, and power to grant licences

4 (1) Within [British India]‡ the [Central Government]§ shall have the exclusive privilege of establishing, maintaining and working telegraphs

Provided that the [Central Government]§ may grant a licence on such conditions and in consideration of such payments as he thinks fit, to any person to establish maintain or work a telegraph within any part of [British India]‡

¶[Provided further that the 'Central Government' § may, by rules made under this Act and published in the "official Gazette"¶ permit, subject to such restrictions and conditions as he thinks fit, the establishment, maintenance and working—

(a) of wireless telegraphs on ships within "Indian"‡ territorial waters, "and on aircraft within or above 'British India'‡, or 'India'‡ or 'Indian'‡ territorial waters, ** and

(b) of telegraphs other than wireless telegraphs within any part of "British India" ‡

(2) The "Central Government" § may, by notification in the "official Gazette," ¶ delegate to the telegraph authority all or any of its powers under the first proviso to sub section (1)

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the 'Central Government' § may by the notification, think fit to impose]

Notes—In England the State has always claimed certain rights of control over telegraphs for the public service *Malsbury* Vol 27 p 354 Such licence should be very strictly construed *National Telephone Co Ltd v Tunbridge Wells Corporation* (1901) 17 T L R 459 C 1 see also *South Eastern Railway v National Telephone Co Ltd* (1908), 2 Ch 50

* Inserted by Act 14 of 1914

† The word "and" is inserted

5 (1) On the occurrence of any public emergency, or in the interest of the public safety, the [Central Government or a Provincial Government]* and to order interception of messages or any officer specially authorised in this behalf by the [Central or Provincial Government]*, may—

(a) take temporary possession of any telegraph established, maintained, or worked by any person licensed under this Act, or

(b) order that any message or class of messages to or from any person, or class of persons or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to [the Government making the order]† or an officer thereof mentioned in the order

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate [of the Central or, as the case may be, the Provincial Government] shall be conclusive proof on the point to the Government of India or to the public emergency and no further evidence

6 Any Railway Company, on being required so to do by the [Central Government]* shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same

7 (1) The [Central Government]* may, from time to time, by notification in the [official Gazette]§ make rules consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say —

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted,

(b) the precautions to be taken for preventing the improper interception or disclosure of messages,

(c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of telegraph officers shall be preserved, and

(d) the fees to be charged for searching for telegrams or other documents, in the custody of any telegraph officer

(3) When making rules for the conduct of any telegraph established maintained or worked by any person licensed under this Act, the [Central Government]* may, by the rules, prescribe fines for any breach of the same

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‡ Substituted by G I Order of 1937 In Burma read the word ' Gazette rule G P
Order of 1937

Order of 1937
Order of 1937
Order of 1937
Order of 1937

Provided that the fines so prescribed shall not exceed the following limits, namely —

(i) When the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues,

(ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one fourth of the amounts specified in clause (i)

8 The [Central Government]* may, at any time, revoke any licence granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder

Revocation of licences

Notes — Licence can be revoked under two conditions viz (1) when there is a breach of any of the condition of the licence and (2) where licensee makes a default as regards payment of any consideration payable under the licence

9 The [Crown]† shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt transmission or delivery of any message, and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently

Government not responsible for loss or damage

Notes — This section exonerates the Secretary of State for India in Council for failure of duty on the part of any of his officials

PART III

POWERS TO PLACE TELEGRAPH LINES AND POSTS

10 The telegraph authority may from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property

Power for telegraph authority to place and maintain telegraph lines and posts

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained

(b) the Government shall not acquire any right other than that of user only in the property under over, along, across in or upon which the telegraph authority places any telegraph line or posts, and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority, and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than

that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in, or upon which the line or post has been placed
- Power to enter on property in order to repair or remove telegraph lines or posts.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities

- 12 Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.
- Power to local authority to give permission under section 10 clause (c) subject to conditions

- 13 When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed, or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be
- Power for local authority to require removal or alteration of telegraph line or post

- 14 The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain)
- Power to alter position of gas or water pipes or drains

Provided that—

(a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is,

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent

15 (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the [Central Government]* may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the [Central Government],* and the order of the [Central Government]* shall be final.

Provisions applicable to other Property

Exercise of powers conferred by section 10 and disputes as to compensation, in case of property other than that of a local authority

16 (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10 clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount, and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation, or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final.

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

* In British India the words within brackets have been substituted by G. I. Order 1937. In Burma for these.

17 (1) When, under the foregoing provisions of this Act a telegraph line or post has been placed by the telegraph authority under, over, along across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form he may require the telegraph authority to remove or alter the line or post accordingly

Removal or alteration of telegraph line or post on property other than that of a local authority

Provided that if compensation has been paid under section 10 clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration

(3) A District Magistrate receiving an application under sub section (2) may, in his discretion reject the same or make an order absolutely or subject to conditions for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form and the order so made shall be final

Provisions applicable to all Property

18 (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit

(2) When disposing of an application under sub section (1) the Magistrate shall, in the case of any tree in existence before the telegraph line was placed award to the persons interested in the tree such compensation as he thinks reasonable and the award shall be final

Notes—*Vide* the English Telegraph (Construction) Act 1908 s 8 Edw VII c 33 s 5 (1), (3)

19 Every telegraph line or post placed before the passing of this Act under, over, along across, in or upon any property, for the purposes of a telegraph established or maintained by the [Central Government],* shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act

19A† (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere

Persons exercising legal rights likely to damage telegraph or interfere with telegraphic communication to give notice

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for the words read the word Government the G. I. Order of 1937
† Sections 19A and 19B have been added by Act VII of 1914

with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class of the telegraph authority, with such property in such manner for a month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.

19B* The [Central Government]† may, by notification in the [official Gazette]‡ confer upon any licensee under section 4, in respect of the extent of his license and subject to any conditions and restrictions which the [Central Government]† may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the [Central Government or to be so established or maintained] †

Provided that the notice prescribed in section 19A shall always be given to the telegraph authority or officer empowered to receive notice under section 19A (1).

PART IV

PENALTIES

20 † (1) If any person establishes, maintains or works a telegraph within [British India]‡ in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine or

* Inserted by Act VII of 1914

†

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§ Section 101 as amended by Act VII of 1914

|| In Burma for "British India" read the words "British Burma" and C. B. O.

1937

with both, and, in any other case, with a fine which may extend to one thousand rupees

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, for the purposes the said Code, be bailable and non cognizable

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to His Majesty.

20A * If the holder of a licence granted under section 4 contravenes any condition contained in his licence he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues

21 If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he, shall be punished with fine which may extend to fifty rupees

22 If a Railway Company, or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues

Intrusion into signal room, trespass in telegraph office, or obstruction

23 If any person—

(a) without permission of competent authority, enters the signal-room of a telegraph-office of the Government, or of a person licensed under this Act, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees

24 If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year

* Section 20A has been added by Act VII of 1914

Intentionally damaging or tampering with telegraphs

25 If any person, intending—

(a) to prevent or obstruct the transmission or delivery of any message, or

(b) to intercept, or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine or with both

25A* If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such

property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also if the telegraphic communication is by reason of the damages so caused interrupted be punishable with a fine which may extend to one thousand rupees

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19A (1)

Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages or divulging purport of signals

26. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of the [Central Government or of a Provincial Government]† or of an officer specially authorised by the [Central or a Provincial Government]† to make the order, omits to transmit or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same

he shall be punished with imprisonment for a term which may extend to three years or with fine, or with both

27 If any telegraph officer transmits by telegraph any message on which the charge prescribed by the [Central Government]‡, or by a person licensed under this Act, as the case may be has not been paid, intending thereby to

Telegraph officer fraudulently sending messages without payment

* Section 25A has been added by Act XII of 1914

PART V

SUPPLEMENTAL PROVISIONS

33 (1) Whenever it appears to the [Provincial Government]* that any act causing or likely to cause

Power to employ additional police in places where mischief to telegraphs is repeatedly committed

wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that of an employment of an additional police-force in that place is

thereby rendered necessary, the [Provincial Government]* may send such additional police-force as it thinks fit to the place and employ the same therein so long as, in the opinion of [that Government],† the

() place shall be charged with the cost of t and the District Magistrate shall subject to the orders of the [Provincial Government],* assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court

(4) The [Provincial Government]* may, by order in writing define the limits of any place for the purposes of this section

34 † [(1) This Act, in its application to the Presidency towns,

Application of Act to Presidency towns and Rangoon

shall be read as if for the words District Magistrate § in section 16 sub section (1) and section 17, sub sections (2) and (3),

for the words 'Magistrate of the first or second class in section 18, sub section (1), 'and section 19A, sub-section (2) § and for the word 'Magistrate' in section 18 sub section (2), there had been enacted the words "Commissioner of Police," and for the words 'District Judge,' in section 16, sub sections (3), (4) and (5) the words 'Chief Judge of the Court of Small Causes']||

(2) ¶

[(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub section (3) of section 16 shall be the same as would be payable under the Court-fees Act, 1870 in respect of such an application to a District Judge beyond the limits of a Presidency town, and fees for summonses and other processes in proceedings before the Chief Judge under sub section (3) or sub section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882]||

* In British India the words within brackets have been substituted by G I Ord r of 1937 In Burma for these words read the word Governor vide G B Order of 1937

† In Burma for the words within brackets read the words the Governor vide G B Order of 1937

THE INDIAN TERRITORIAL FORCE ACT. (XLVIII OF 1920)

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[THE INDIAN TERRITORIAL FORCE ACT, 1920]* (ACT NO. XLVIII OF 1920.)

PASSED BY THE GOVERNOR GENERAL IN COUNCIL

(Received the assent of the Governor-General on the 22nd September, 1920)

An Act to constitute an Indian Territorial Force †

[WHEREAS it is expedient to provide for the constitution of an Indian Territorial Force†; It is hereby enacted as follows.—]*

Notes—This Act was amended by Act IX of 1928 in order to give effect to the recommendations of the Auxiliary and Territorial Force Committee—*Vide, Statement of Objects and Reasons of Act IX of 1928.*

Short title, extent and commencement

[1 (1) This Act may be called the Indian Territorial Force Act, 1920.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas

(3) It shall come into force on the first day of October, 1920]‡

‡ 17 was an expert and some troops to the Great War

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—†

"enrolled" means enrolled or re-enrolled in the [Indian Territorial Force]§ under this Act.

I Order of 1937

"I" vide G. B. Order of 1937.

§ In Burma for "Indian Territorial Force" read "Burma Territorial Force," vide G. B. Order of 1937.

'European British subject' means any person who is a European British subject as defined in the Code of Criminal Procedure, 1898, or is a British subject of European descent in the male line,

'non commissioned officer' means a person holding non-commissioned rank in the [Indian Territorial Force,]* and includes an acting non-commissioned officer, means a senior officer or a junior officer,†

'prescribed' means prescribed by rules made under this Act ‡

[2A For the purposes of this Act, the Provinces of Bombay and Sind, and the Provinces of Bihar and Orissa, shall be deemed to be one Province until in either case the Central Government by notification in the official Gazette otherwise directs]§

Special provisions as to Sind and Orissa

3 There shall be raised and maintained in the manner hereinafter provided a force to be designated the [Indian Territorial Force]*

Provided that the [Central Government]|| shall establish all or any of the branches of the Force as circumstances may permit from time to time

4 (1) The [Central Government]|| may constitute [for any province]¶ one or more ["provincial"¶]** corps or units of the [Indian Territorial Force]* and may disband 'or reconstitute'‡ any corps or unit so constituted

Constitution and disbandment of units

(2) The [Central Government]|| may constitute for any town or group of towns [in a province]¶ one or more urban corps or units of [the Indian Territorial Force] to be recruited from persons residing in or near such town or towns, and may disband or re-constitute any corps or unit so constituted

¶(3) The [Central Government]|| may constitute [for any province]¶ a University corps consisting of one or more units of the Territorial Force, for the appointment thereto of students of, and other persons connected with [a University established by law in British India, or colleges affiliated to such a University,]†† and may disband or re constitute any unit so constituted

Notes—This section provides separately for the consideration for each of the three proposed branches of the Indian Territorial Force namely provincial units urban units and University Training Corps—*Statement of Objects and Reasons*

* In Burma for 'Indian Territorial Force' read 'Burma Territorial Force' vide G B Order of 1937

† Inserted by Act 9 of 1928

‡ Certain words after this were repealed by Act IX of 1928

§ In British India Section 24 has been inserted by G I Order of 1937 This

lets have been inserted by G I Order of Governor vide G B Order of 1937

1937

; have been omitted by G B Order of

†† In Burma for the words within brackets the words the University of Pangoon or colleges affiliated thereto have been substituted by G B Order of 1937

Classes of officers.

4A* (1) There shall be the following classes of officers in the [Indian Territorial Force],† namely —

(a) senior officers, holding commissions‡ with British designation of rank, and

(b) junior officers, holding commissions‡ with [Indian designation]§ of rank

(2) An officer shall be deemed to be enrolled in the [Indian Territorial Force]† so long as he holds a commission in that Force

Notes —The junior officers mentioned in this clause will correspond to the present ranks of Indian officers in the regular Indian Army, namely, Subadars, Jamadars, etc. The senior officers will correspond to the British officers of the Indian Army, namely, Lieutenants, Captains, etc. —*Statement of Objects and Reasons*

5 (1) Any British subject or any subject of a State in [India]§ may offer himself for enrolment in the [Indian Territorial Force],† and any such person who satisfies the prescribed conditions may be enrolled in the prescribed manner for such period, not exceeding six years, as may be prescribed.

"Provided that no European British subject shall be enrolled in any corps or unit of the [Indian Territorial Force]† other than a University Corps"

(2) An applicant for enrolment may apply to be enrolled for service in any particular branch, corps or unit constituted for the [Province "or town or group of towns,"*]|| within which he for the time being resides

†(3) The [Central Government]** may by notification in the [official Gazette]†† declare in respect of any State in India the Province in which persons residing in that State may be enrolled, and persons so residing shall thereupon be deemed for all purposes of this Act to reside in that Province"

Notes —"The amendment which permits any member of a University College, who is a British subject, to be enrolled in the University Training Corps follows the specific recommendation of the committee to that effect —*Statement of Objects and Reasons* Under the new proviso to section 5, some European British subjects shall become eligible for enrolment in the University Corps, and we have, therefore, inserted a new clause (2) in the Bill amending the long title and preamble to this Act so as to bring them into accord with this change. We have re-numbered the remaining clauses of the Bill. —*Report of the Select Committee*

6 (1) Every person enrolled shall without unnecessary delay be appointed in the prescribed manner to a corps or unit constituted under section 4 for the [Province "or town or group of towns,"*]|| in which he for the time being resides

* Inserted by Act 9 of 1928

† In Burma for "Indian Territorial Force" read "Burma Territorial Force," vide G. B. Order of 1937

‡ Certain words after this, repealed by G. I. Order of 1937 and G. B. Order of 1937.

§ "Burma designation" and for "India"

brackets read the word "place," vide G. B. Order

1937.

††

1937

(2) Any person who has been enrolled for service in any particular branch, corps or unit shall be appointed to a corps or unit of that branch or to that corps or unit, as the case may be

7. (1) Any person appointed to a corps or unit under section 6 may be transferred, whether on disbandment of the corps or unit or otherwise to another corps or unit of the [Indian Territorial Force],* in such manner as may be prescribed

(2) Nothing contained in sub-section (1) shall be deemed to authorise the transfer without his own consent of any person enrolled to a corps or unit constituted for a [Province "or town or group of towns" †] ‡ other than that in which he for the time being resides or of a person enrolled for service in a particular branch to a corps or unit of another branch, or of a person enrolled for service in a particular corps or unit to any other corps or unit [or of a person enrolled in an urban corps or unit to a provincial corps or unit] §

(3) Any person enrolled may be attached at his own request to any corps or unit of the [Indian Territorial Force]* or to any regular forces

7A † (1) Any enrolled person who leaves his place of residence for the time being and thereby leaves the [Province]‡ in which the corps or unit in which he is serving is constituted shall, if he does not intend to return to that province, notify the prescribed authority in that province of his change of residence

(2) If such person having intended to return does not return within three months, he shall notify the prescribed authority as aforesaid immediately on the expiry of that period

(3) The prescribed authority on being notified of a change of residence under sub section (1) or sub section (2) may, subject to the provisions of section 7, transfer such person from the corps or unit in which he is serving to another corps or unit

Notes—This is adapted from section 16 of the Auxiliary Force Act and is intended not merely to assimilate the two Acts but also to secure that the units of the Indian Territorial Force shall be up to their recorded strength in the time of disturbance—*Statement of Objects and Reasons*

8 Every person enrolled shall be entitled to receive his discharge from the [Indian Territorial Force]* on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged from the said Force by such authority and subject to such conditions as may be prescribed and shall be so discharged on a recommendation of the Advisory Committee in this behalf

Provided that no person enrolled who is for the time being engaged in military service under the provisions of this Act shall be entitled to receive his discharge before the termination of such service

* In Burma for 'Ind an Territorial Force' read 'Burma Territorial Force' vide G B Order of 1937

† Inserted by Act 9 of 1923

‡ In Burma for the words within brackets the word 'place' has been substituted vide G B Order of 1937

§ In Burma the words within brackets have been omitted by G B Order 1937

|| The word within brackets has been substituted by Act 9 of 1923

9. (1) Every person enrolled "who has attained the age of eighteen years"* shall, subject to such conditions as may be prescribed, be bound to serve in any corps or unit of the [Indian Territorial Force]† to which he has been appointed or transferred or is for the time being attached, and shall be subject to all rules and regulations that may be made under this Act relating to such corps or unit

"Provided that nothing in this sub-section shall apply to persons enrolled in a University Corps"‡

(2) Every person enrolled shall be liable to perform military service—

(a) when called out with any portion of the [Indian Territorial Force]† by an order of the senior military officer present either to act in support of the civil power or to provide guards which, in the opinion of such officer, are essential, or

(b) when any portion of the [Indian Territorial Force]† to which he belongs has been embodied to support or supplement His Majesty's regular forces in [India]† in the event of an emergency by a notification directing such embodiment issued by the [Central Government]§ and published in the [official Gazette]||, or

(c) when attached at his own request to any regular forces

10 [(1) No person embodied under section 9 shall be required to perform military service beyond the limits of India save under a general or special order of the [Central Government],§ "and no person for the time being serving in an urban corps or unit shall at any time be required to perform military service beyond the limits of the province in which the corps or unit in which he is serving is located, save when it is, in the opinion of the senior military officer present, necessary to proceed beyond those limits in the course of the military operations upon which the corps or unit or any portion thereof is for the time being engaged."†]¶

(2) Any portion of the [Indian Territorial Force]† which having been called out or embodied under section 9, is performing military service shall be replaced by regular troops or otherwise as soon as circumstances permit, and shall not be required to perform such service after such replacement has been effected to the satisfaction of the senior military officer in charge or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 9.

* Inserted by Act 9 of 1923

† In Burma for "Indian Territorial Force" read "Burma Territorial Force" for 'India' read "Burma" and for 'Province' read "Place" as in G. O. Order of 1937.

‡ The words within quotation have been substituted by Act 9 of 1928

§ Substituted by G. O. Order of 1937

|| G. O. Order of 1937

¶ military service over

Notes — The object of this addition to section 10 is to secure that a military movement actually in progress shall not be interfered with by reason of a cessation of the liability of the men occurring at the border of a province — *Statement of Objects and Reasons*

*11 (1) Every senior officer of the [Indian Territorial Force],† when doing duty as such officer, shall be subject to the Army Act, and any orders of regulations made thereunder, whereupon the said Act, orders and regulations shall apply to him as if he held the same rank in His Majesty's Army as he holds for the time being in the said Force, subject to the terms of his commission and the orders of His Majesty's Army as he holds for the time being in the said Force, subject to the terms of his commission and orders of His Majesty

(2) Every junior officer of the [Indian Territorial Force],† when doing duty as such officer, shall be subject to the [Indian Army Act, 1911],† and the rules and regulations made thereunder, whereupon the said Act, rules and regulations shall apply to him as if he held the same rank in His Majesty's [Indian Forces],† as he holds for the time being in the said Force, subject to the terms of his commission and the orders of the Governor-General

(3) Every non-commissioned officer and man of the [Indian Territorial Force],†—

(a) when called out or embodied for military service under section 9,

(b) when attached to, or otherwise acting as parts of, or with any regular force, or

(c) when embodied for, or otherwise undergoing military training in the prescribed manner, shall be subject to the [Indian Army Act, 1911],† and the rules and regulations shall apply to him as if he held the same rank in His Majesty's [Indian Forces],† as he holds for the time being in the said Force, subject to the orders of the Governor-General.

Provided that the said Act, rules and regulations shall, in their

Provided further that non-commissioned officers and men of an urban corps or unit, when undergoing military training without having been embodied for that purpose and non-commissioned officers and men of a University Corps when undergoing training, shall, in respect of such training be subject only to such disciplinary and other rules as may be prescribed

(4) Where an offence punishable under the [Indian Army Act, 1911],† or, as the case may be, under that Act as modified under subsection (3) has been committed by any person whilst subject to that Act under the provisions of this section, such person may be taken into and kept in military custody and tried and punished for such offence, although he has ceased to be so subject as aforesaid, in like

manner as he might have been taken into and kept in military custody, tried or punished, if he had continued to be so subject

Provided that no such person shall be kept in military custody after he has ceased to belong to the [Indian Territorial Force] * unless he has taken into or kept in military custody on account of the offence before the date on which he ceased so to belong, nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial has already commenced before such expiry

Notes—This important clause provides for the discipline to which the officers and men of the Indian Territorial Force shall be subject in the performance of their duties at all times to subject them as officers that the 1911 (VIII of 1911) and Indian Army Act 1911 when mobilised or attached for regular troops but shall be subject to less stringent discipline territorial Force when

subject to the orders of His Majesty and in sub-section (4) the phrase 'subject to the orders of the Governor General' allow provision to be made for the numerous points of detail which may arise in relations between officers and non-commissioned officers of the Indian Territorial Force and officers and non-commissioned officers of the regular Army when acting together—*Statement of Objects and Reasons*

†11A In addition to, or in substitution for any punishment or Summary trial and punishments punishments to which he may be liable under the [Indian Army Act, 1911] * a junior officer, non-commissioned officer or men of the [Indian Territorial Force] * not being a member of University Corps, may be punished, either by a Criminal Court or summarily by order of the prescribed authority, for any offence under that Act, or for the non-contravention of any rule or regulation under this Act, with fine which may extend to fifty rupees to be recovered in such manner and by such authority as may be prescribed

Provided that no fine shall be summarily inflicted by order of the prescribed authority in any case in which the accused claims to be tried by a Criminal Court

Provided further that no Court inferior to that of [a Presidency Magistrate or] ‡ a Magistrate of the first class shall try any offence made punishable by or under this Act

Notes—This section is intended to provide for the trial of officers and men of the Indian Territorial Force by a Court martial for the trial tried by the prescribed authority not below the rank of

†11B When a junior officer, non-commissioned officer or man of the [Indian Territorial Force] * is Presumption as to certain documents required by or in pursuance of any rule, regulation or order made under this Act, to attend at any place a certificate purporting to be signed by the prescribed officer stating that the person

* In Burma for Indian Territorial Force read Burma Territorial Force and for Indian Army Act 1911 read Burma Army Act 1911 G. O. Order of 1913

‡ Substituted by Act 9 of 1919

‡ In Burma the words within brackets have been omitted by G. O. Order of 1913

so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein

["12* (1) In each Province in which any unit or units of the Indian Territorial Force is or have been constituted, the Central Government shall constitute a Provincial Advisory Committee for all such units and a unit Advisory Committee for each of such units †

(2) The 'Central Government' † shall constitute a Central Advisory Committee to advise it on matters connected with the Indian Territorial Force generally ‡

(3) The constitution, powers and procedure of the Advisory Committees shall be such as may be prescribed

Notes—This important clause outlines a scheme of Advisory Committees whereunder there will be a Provincial Advisory Committee for all the units in each province and a unit Advisory Committee for each unit of the Territorial Force within that province. The policy underlying the section is that the powers and duties of Advisory Committees should be expanded as these committees gain experience and confidence and as the ways in which they can be usefully employed become known—*State ment of Objects and Reasons*

13 (1) The [Central Government]§ may, after previous publication, make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing powers such rules may—

(a) prescribe the manner in which, the period for which, and the conditions subject to which persons may be enrolled under section 5

(b) prescribe the manner in which persons enrolled may be appointed to corps and units under section 6 or transferred under section 7 or 'section 7A' ||

(c) prescribe the authorities by which and the conditions subject to which persons enrolled may be discharged under section 8.

(d) prescribe the preliminary and periodical military training "compulsory and voluntary, for" ¶ any persons or class of persons enrolled and provide for the embodiment of any corps or unit for that purpose,

(e) prescribe the military or other obligations to which members of the University Corps shall training and provide generally for cases,

(f) provide for the offering themselves for enrolment under section 5,

(g) provide for and regulate the remuneration allowances gratuities or compensation (if any) to be paid to any person or class of persons enrolled or to their dependants, and

t have been substituted by G I

sory Committee to advise him on matters connected with the Territorial Force and a unit Advisory Committee for each unit

§ In British India the words within brackets have been substituted by G I Order

1937 In Burma for these words read the word Governor vide G I Order of 1937

|| Inserted by Act 9 of 1928

¶ Inserted by Act 5 of 1931

(h) provide for any other matter which under this Act is to be or may be prescribed

(3) All rules made under this Act shall be published in the [official Gazette]* and on such publication shall have effect as if enacted in this Act.

14. [The Commander-in-Chief of His Majesty's Force in India][†] may make regulations consistent with this Act and the rules made thereunder providing generally for all details connected with the organisation and the duties, military persons enrolled generally of the foregoing power, such regulations may specify the courses of training or instruction to be followed by any person or class of persons enrolled.

15. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898,§ all officers, non-commissioned officers and men of the [Indian Territorial Force]|| who have been appointed to a corps or unit shall be deemed to be officers, non-commissioned officers and soldiers, respectively, of His Majesty's Army

16. No person shall be liable to pay any municipal or other tax in respect of any horse, bicycle, motor bicycle, motor car, or other means of conveyance which he is authorised by regulations made under section 14 to maintain in his capacity as a member of the [Indian Territorial Force] ||

THE INDIAN TREASURE-TROVE ACT. (VI OF 1878.)

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- 2 Extent
- 3 [Repeated.]
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claims disputed, shares

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* In Burma read "Burma Territorial Force," rule G. B. Order of 1934.

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- 18 Collector to exercise powers of Civil Court
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 20 Penalty on finder failing to give notice etc
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THE INDIAN TREASURE-TROVE ACT, 1878.

(ACT NO VI OF 1878)

(Received the Governor-General's assent on the 13th February, 1878)

An Act to amend the Law relating to Treasure-trove

WHEREAS it is expedient to amend the law relating to
 Preamble Treasure-trove, It is hereby enacted as follows —

Preliminary

Short title [1 This Act may be called the
 Indian Treasure-trove Act 1878

Extent It extends to the whole of British
 India *]†

Notes — This Act applies to things which are hidden 59 C 21—A I R 1931
 Cal 430

2 [Repeal of enactment]—*Repealed by the Repealing and Amending Act (XII of 1891)*

3 In this Act—

Interpretation clause

'Treasure' treasure means anything of any
 value hidden in the soil or in anything
 affixed thereto

'Collector' means (1) any revenue-officer in independent charge
 Collector of a district and (2) any officer appointed
 by the [Provincial Government] ‡ to
 perform the functions of a Collector under this Act §

When any person is entitled, under any reservation in an instru-
 Owner ment of transfer of any land or thing
 affixed thereto to treasure in such land or
 thing, he shall for the purposes of this Act, be deemed to be the
 owner of such land or thing

* Certain words after this having been repealed by Act 10 of 1914 have been omitted

† In Burma for section (1) read (1) This Act may be called the Treasure-trove
 Act

‡ In Burma for section (2) read (2) This Act may be called the Treasure-trove
 1937

§ In Burma for section (3) read (3) This Act may be called the Treasure-trove
 under t

Procedure on finding Treasure

4 Whenever any treasure exceeding in amount or value ten rupees is found the finder shall, as soon as practicable give to the Collector notice in writing—

(a) of the nature and amount or approximate value of such treasure

(b) of the place in which it was found

(c) of the date of the finding,

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require

Finders—Where coolies while engaged by the employers discovered in the presence of their employers and several others a box which when opened before them revealed treasure of value and the box was removed by one of the employers who secretly disposed of them and the coolies were prosecuted under s 20 *Held* that the coolies were finders within the meaning of this section 27 M L J 477

Notification requiring claimants to appear

5 On receiving a notice under section 4, the Collector shall after making such inquiry (if any) as he thinks fit, take

the following steps (namely) —

(a) he shall publish a notification in such manner as the [Provincial Government]* from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature amount and approximate value*) was found in a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months after the date of the publication of such notification,

(b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect

6 Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right

Matters to be enquired into and determined by the Collector

7 On the day notified under section 5 the Collector shall cause the treasure to be produced before him, and shall

enquire as to and determine,—

(a) the person by whom the place in which, and the circumstances under which such treasure was found, and

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden

* In Tel. 1 In 1 v the word is with in brackets 1 v 1 on a substitute 1 v C 1 Order of 1937 In Burma for these words read the word Govern r 1 v 1 v C 1 Order of 1937

8 If, upon an inquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right

When treasure may be declared ownerless

9 If, upon such inquiry the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

if such suit is instituted within such period and the plaintiff's claim is finally rejected,

the Collector may declare the treasure to be ownerless

Appeal against such declaration

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date

thereof to the Chief Controlling Revenue Authority

Subject to such appeal, every such declaration shall be final and conclusive

10 When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner the place in which it has been found in manner hereinafter provided

11 When a declaration has been made in respect of any treasure as aforesaid and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof

12 When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) —

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

(a) allot to either party the whole or more than his share of

such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be, or

(b) sell such treasure or any portion thereof by public auction and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof to which they are respectively entitled under such division

13 When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court

14 Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right, and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants

15 If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16 The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure

or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred

Decision of Collector final, and no suit to lie against him for acts done *bona fide*

18 A Collector making any inquiry under this Act may exercise any power conferred by the Code of Civil Procedure* on a Civil Court for the trial of suits

Collector to exercise powers of Civil Court

19 The [Provincial Government]† may, from time to time, make rules consistent with this Act to regulate proceedings hereunder

Power to make rules

Such rules shall, on being published in the [official Gazette],‡ have the force of law

Penalties

20 If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4 or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled shall vest in Her Majesty,

Penalty on finder failing to give notice, etc

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both

Notes—A third class magistrate has no jurisdiction to try an offence under this section 2 Weir 23 15 A L J 796

21 If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code,§ any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both

SCHEDULE

[*Repealed by the Repealing and Amending Act (VII of 1921)*]

THE VACCINATION ACT (XIII OF 1880).

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- 2 Interpretation clause

* Act V of 1909

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SECTION.

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- 6 Prohibition of inoculation
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Vaccinator to vaccinate children, or deliver certificates of postponement
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- 13 Procedure when child is unfit for vaccination
Renewal of certificates of postponement

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- 23 Municipal funds to receive fines and meet expenditure

THE VACCINATION ACT, 1880.

(ACT NO. XIII OF 1880 *)

An Act to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities [and] † Cantonments [and notified areas];

WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory in certain municipalities [and] †

Preamble

* For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 60, for Report of Select Committee, see *ibid* p. 205 and for Proceedings in Council, see *ibid*.

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1903 and in other respects the words within square brackets are the same—1903 C P
Act 3 of 1915.

cantonment [and notified areas as defined in sect on 193 of the United Provinces Municipalities Act 1900]*, It is hereby enacted as follows

Short title

1 This Act may be called the Vaccination Act 1880, and

it shall apply only to such municipalities [and]† cantonments [and notified areas]* [situate in the territories

Application

administered respectively by the ‡ Lieutenant-Governors of the North Western Provinces and the§ Punjab and the Chief Commissioners of Oudh and the Central Provinces || Assam Ajmere and Coorg]* as it may be extended to in manner hereinafter provided

Interpretation-clause

2 In this Act unless there is some thing repugnant in the subject or context —

(1) the expression Municipal Commissioners' means a body of Municipal Commissioners or a Municipal Committee constituted under the provisions

Municipal Commissioners

of any enactment for the time being in force

parent

(2) parent' means the father of a legitimate child and the mother of an illegitimate child

guardian

(3) guardian includes any person who has accepted or assumed the care or custody of any child

(4) unprotected child means a child who has not been protected from small pox by having had that disease either naturally or by inoculation or by

unprotected child

having been successfully vaccinated and who has not been certified under this Act to be insusceptible to vaccination

(5) inoculation means any operation performed with the object of producing the disease of small pox in any person by means of variolous matter

inoculation

* UNITED PROVINCES AND CENTRAL PROVINCES ONLY.—The words in official areas in square brackets in the title and in section 1 of the order and official areas as defined in section 193 of the United Provinces Municipalities Act 1900 in the preamble of the Act as in force in the United Provinces were added by the United Provinces Vaccination Act 1907 as 28 and 11 respectively of the Act of 1900) for Central Provinces the Central Provinces Municipal Act brackets are the same—) G. O. P.

PROVINCIAL ONLY.—The words and here in the preamble in section 1 and in force by the United Provinces Vaccination Act and Central Provinces Vaccination Act

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† I Burma the words within brackets have been omitted by G. B. Order

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SECTION.

- 4 Extension to cantonments
- 5 Power to withdraw local area from operation of Act
- 6 Prohibition of inoculation
Inoculated persons not to enter local area subject to Act without certificate
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Renewal of certificates of postponement

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WHEREAS it is expedient

Preamble

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1865 (Ben. Act 4 of 1865)

The amendment and repeal made by this Act are indicated by foot notes to the sections affected

As to inoculation in Kumaon and Garhwal and the Tarai Parganas to which that Act has been extended, see Act 24 of 1863

† UNITED PROVINCE AND CENTRAL PROVINCES ONLY — The word 'and' here as in force of section 1 of the Vaccination Law Amendment Act of 1915.

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1 This Act may be called the
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Application

notified areas]* [situate in the territories administered respectively by the † Lieuten-

ant Governors of the North-Western Provinces and the Punjab and the Chief Commissioners of Oudh, and the Central Provinces, Assam, Ajmere and Coorg] as it may be extended to in manner hereinafter provided

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‘Municipal Commissioners,’ Municipal Commissioners or a Municipal Committee constituted under the provisions of any enactment for the time being in force

parent

(2) parent' means the father of a legitimate child and the mother of an illegitimate child

guardian

(3) 'guardian' includes any person who has accepted or assumed the care or custody of any child

(4) **unprotected child** means a child who has not been protected

unprotected child

from small-pox by having had that disease either naturally or by inoculation or by

having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination

(5) inoculation means any operation performed with the object

inoculation '

of producing the disease of small-pox in any person by means of variolous matter

* UNITED PROVINCES AND CENTRAL PROVINCES ONLY.—The words and notified

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the Central Provinces Municipal Act
brackets are the same—*Ide C P*

† UNITED PROVINCES AND CENTRAL PROVINCES ONLY.—The word "and" here in the preamble and in section 1 as in force in the United Provinces Vaccination Law and Central Provinces Vaccination Law.

udh ' *see* Procl,

• Pt I, p. 98, and

or as administered
to the North
provinces Law and

Indu by G

* In Burma the words within brackets have been omitted by G. E. Order of

Cr C H Vol I-188

(6) "vaccination-circle" means one of the parts into which a municipality [or]* cantonment [or notified area]† has been divided under this Act for the performance of vaccination :

(7)‡ "vaccinator" means any vaccinator appointed under this Act to§ perform the operation of vaccination, or any private person authorised || in manner hereinafter provided to perform the same operation ; and includes a "Superintendent of vaccination."

(8) "vaccination-season" means the¶ period from time to time fixed by the [Provincial Government]** for any local area under its administration by notification in the official Gazette, during which alone vaccination may be performed under this Act.

3. A majority in number of the persons present at a meeting of the municipal commissioners specially convened in this behalf may apply to the [Provincial Government]** to extend this Act to the whole or any part of a municipality, and thereupon the [Provincial Government]** may, if it thinks fit, by notification published in the official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the [Secretary to the Provincial Government]**. When six weeks from the said publication have expired, the [Provincial Government]**, if no such objections have been sent as aforesaid, or when such objections have been so sent if in its opinion they are insufficient, may, by like notification effect the proposed extension.

Central Provinces by the United Provinces Vaccination Law Amendment Act, 1907 (U. P. Act 2 of 1907), s. 5, and C. P. Act 3 of 1915, s. 5, respectively.

... or notified
... in the United
... Law Amendment
... vely.
... Prohibition of
... and in s. 3 (a)

... cination, see s. 4
of the Burma Prohibition of Inoculation and Licensing of Vaccinators Act, 1909 (Bur. Act 6 of 1909.)

|| Certain words repealed by Act IV of 1914 have been omitted.
* For list of notifications fixing vaccination periods for different Municipalities and cantonments in :—

Coorg	...	See Coorg R. and O.
Punjab	...	See Punj. R. and O.
United Provinces	...	See U. P. R. and O.

... India by G. I. Order of
... or of 1937.
... as may be specified in

Section 3A was inserted in the Act as in force in the United Provinces and Central Provinces after section 3, by the United Provinces Vaccination Law Amendment Act, 1907 (U. P. Act 2 of 1907), s. 6 and by C. P. Act 3 of 1915 respectively.

official Gazette declare its intention to extend this Act to the whole or any part of a notified area

Any inhabitant of such notified area or part thereof who objects to such extension may, within six weeks from the date of such publication send his objection in writing to the [Secretary to the Provincial Government]* and the Provincial Government† shall take such objection into consideration. When six weeks from the said publication have expired, the [Provincial Government],† if no such objections have been sent as aforesaid or (when such objections have been so sent) if in its opinion they are insufficient, may by like notification effect the proposed extension]

4 The† [Provincial Government]† may§ by notification in the [official Gazette] || extend this Act to the whole or any part of a military cantonment

5 The [Provincial Government]† may, by notification in the official Gazette withdraw any local area in a municipality* [or notified area]** or any local area in a cantonment, from the operation of this Act

Power to withdraw local area from operation of Act

Prohibition of inoculation

6 In any local area to which the provisions of this Act apply, inoculation shall be prohibited and no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of operation, without a certificate from a medical practitioner of such class as the [Provincial Government]† may, from time to time by written order, authorise to grant such†† certificates, stating that such person is no longer likely to produce small-pox by contact or near approach

Inoculated persons not to enter local area subject to Act without certificate

1 in

r of

Coorg
Eastern Bengal and Assam (excluding the

See Coorg R and O

Assam R and O

Punj R and O

U P R and O

for these words read

Ajmer
Burma
Central Provinces
Eastern Bengal and Assam (excluding the districts transferred from Bengal)
Punjab

See Aj R and O

See Bur R M

See C P R. and O

See Assam R and O

See Punj R and O

See U P R and O

area
Provic
Act 1907 (U 1 Act 2 of 1907) s 7 and U P Act 3 of 1915

OVLI —The words notified
act as is in force in
ted

†† For notification appointing officers to grant certificate in

7 Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles,

Vaccination-circles

one or more vaccinators shall be appointed in manner hereinafter provided for each such circle, and

Vaccinators

one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area

Superintendent of vaccination

8 The Commissioner* may by written licence authorise private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such licence

Private vaccinators

†9 When any unprotected child, having attained the age of 6 months, has resided for a period of one month during the vaccination-season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated or send for a vaccinator to vaccinate it

Unprotected children to be vaccinated

Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season

Vaccinator to vaccinate children or deliver certificates of postponement

10 The parent or guardian of every child which has been vaccinated under section nine shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator, and

Inspection after vaccination

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection

11 When it is ascertained at the time of inspecting a child under section ten that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected

Procedure when vaccination is successful

12 When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner hereinafter provided

Procedure when vaccination is unsuccessful

13 A certificate granted under section nine showing the unfitness

Procedure when child is unfit
for vaccination

of a child for vaccination shall remain in force for the period stated therein and on the termination of that period or, if that period terminates after the vaccination season is over when the next vaccination season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator

Renewal of certificates of
postponement

Provided that, if the child is still found to be in a state unfit for vaccination, the certificate granted under section nine shall be renewed

14 If the Superintendent of vaccination is of opinion that a child

Certificates of insusceptibility
of successful vaccination

which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination he shall deliver to the parent or guardian of such child a certificate under his hand to that effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated

15 The vaccination of a child shall ordinarily be performed with

What lymph to be used

such lymph as may be prescribed by the rules to be made under this Act

Provided that,

1st, if animal-lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human lymph, it shall be so vaccinated, and

2nd, if in any local area in which animal-lymph is procurable, human lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated

16 No fee shall be charged by any vaccinator except a private

No fee to be charged except by
private vaccinator

vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act

Provided that it shall be lawful for a vaccinator to accept a fee for

Proviso

vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed

17 The Superintendent of vaccination, in addition to the other

Duties of Superintendent of
vaccination

duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, the local area under his superintendence have been vaccinated, if he has reason to believe that the parent or guardian of any child is bound by the provisions hereinbefore contained to

the vaccination of such child or to present it for inspection and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make inquiry, and shall, if the fact is proved forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated or (as the case may be) that it be presented for inspection at a time and place to be specified in such notice

Notes—Failure to comply with a notice for the vaccination of a child issued under this section is not punishable under s 7 of the Burma Laws Amendment Act 1900 2 L B R 279

18 If such notice is not complied with, the Superintendent of vaccination shall report the matter to the Order by Magistrate when notice not complied with *Magistrate of the District, or such Magistrate as the [Provincial Government]† or the Magistrate of the District may from time to time‡ appoint in this behalf and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order

If on such date the order has not been obeyed, the Magistrate shall Procedure when order not obeyed summon the parent or guardian before him and unless just cause or excuse is shown shall deal with the disobedience as an offence punishable under section twenty-two

The Magistrates appointed under this section shall as far as is conveniently practicable be natives of [India]§ and not paid servants of the [Crown] ||

Notes—Disobedience to the notice issued by the vaccinating authorities is not an offence 4 L B R 12

19 When this Act has been applied to any municipality or any part thereof, the municipal commissioners may from time to time, make† rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies Such rules shall be made in the manner in which under, the law for the time being in force, the "Municipal ** commissioners make rules or bye laws for the

* 1898)
G I Order of 1937
tes Moulmein

G I Order
17

* For rules for municipalities in —

Ajmer
Burma
Central Provinces
Coorg
Punjab
United Provinces

See A J R and O
See Bur R M
See C P R and O
See Coorg R and O
See Punj R and O
See U I R and O

** Substituted by Act IV of 1914

regulation of other matters within the limits of the municipality, and shall,* when confirmed by the [Commissioner]† and published in the official Gazette, have the force of law

Provided that the [Commissioner]† may at any time rescind or modify any such rule

‡[19A. When this Act has been applied to any notified area or any part thereof, the 'Provincial Government § may, from time to time make rules consistent with this Act, for the proper enforcement of this Act within the limits to which it applies. Such rules, when published in the official Gazette, shall have the force of law]

20 When this Act [has been applied to any cantonment or any part thereof the [Provincial Government]§ may, from time to time,|| make such* rules

Power to make rules for cantonments

What rules under sections 19 [19A] and 20 may provide for

21 The rules to be made for any local area under section nineteen [nineteen A]** or twenty may, among other matters, provide for—

(a) the division of such local area into circles for the performance of vaccination,

(b) the appointment of a place in each vaccination circle as a public vaccine station and the posting of some distinguishing mark in a conspicuous place near such station,

(c) the qualifications to be required of public vaccinators and superintendents of vaccination,

(d) the authority with which their appointment, suspension and dismissal shall rest

(e) the time of attendance of public vaccinators at the vaccine-stations and their residence within the limits of the vaccination-circles

(f) the distinguishing mark or badge to be worn by them,

(g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties,

(h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses

|| Certain words after this repealed by Act 33 of 1930 have been omitted

* For rules applicable to cantonments in —

Ajmer

See A J R and O

Burma

See Bur R M

Central Provinces

See C P R and O

Lunjab

See Punj R and O

United Provinces

See U P R and O

** UNITED PROVINCES AND CENTRAL PROVINCES ONLY —The word an 'nineteen A' in square brackets were inserted in s 20 of the Act as in force in the Provinces and Central Provinces by the U P Vaccination Law Amendment (U P Act 2 of 1907) s 9 and C P Act 1915

(i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination,

(j) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph,

(k) the fee to be paid for vaccination with animal-lymph under section fifteen,

(l) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination-circle at the request of the parent or guardian of the said child;

(m) the preparation and keeping of registers showing—

the names of children born in such local area on or after the date of the application of this Act,

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time of this Act is applied, under the age of fourteen years if boys, and of eight years if girls, the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month;

the result of each vaccination or its postponement, and the delivery of certificates, if any,

(n) the assistance to be given by the Municipal Commissioners and municipal servants in the preparation of these registers, and in other matters, and

(o) the preparation of vaccination-reports and returns

22 Whoever commits any of the under-mentioned offences (that is to say)—

Punishment of offences

(a) violates the provisions of section six,

(b) neglects without just excuse to obey an order made under section eighteen,

(c) breaks any of the rules made under section nineteen [nineteen A]* or twenty, or

(d) neglects without just cause to obey an order made under section eighteen after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say)—in the case of the offence mentioned in clause (a) with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both,

in the case of the offence mentioned in clauses (b) and (c), with fine which may extend to fifty rupees, and

in the case of the offence mentioned in clause (d), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

23 The amount of all fees and fines realised and the amount of all expenditure incurred under this Act in any municipality [or notified area]† shall respectively be credited to and paid from the municipal funds [or notified area funds] †

Municipal funds to receive fines and meet expenditure

* UNITED PROVINCES AND CENTRAL PROVINCES ONLY.—The word and letter "United Provinces and Central Provinces" in the Act 1907
† the Central Pro-

THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, (XXXI OF 1871)

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<i>II—Standards</i>	10 Appointment of Wardens
2 Standard of weight	11 Power to make rules
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Sub-districts how defined	14 Warden may refuse to verify or
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[INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, 1871.]*

(ACT NO XXXI OF 1871)

(Received the Governor General's assent on the 30th October 1871)

[An Act to regulate the Weights and Measures of Capacity of British India

WHEREAS it is expedient to provide for the ultimate adoption of a uniform system of Weights and Measures of Capacity throughout British India,

Preamble

It is hereby enacted as follows —]*

Notes —The object of the present Bill is recently been adopted by the Governor General Secretary of State as to the steps to be taken for British India —*Statement of Objects and Reasons* Central Provinces by C P Act 2 of 1923

I—Preliminary

[1 This Act may be called the Indian Weights and Measures of Capacity Act, 1871 and extends to the whole of British India]†

Short title
Local extent

II—Standards

2 The primary standard of weight shall be called a seer, and shall be a weight of metal in the possession of the [Central Government]‡ equal, when weighed in a vacuum to the weight known in France as the Kilogramme de Archives

Standard of weight

* In Burma the words within brackets have been omitted by G B Order of 1937

† In Burma for section 1 read the following section 1 —

1 This Act may be called the Weights and Measures of Capacity Act
‡ Substituted by the C P Order of 1937

Units of weights and measures of capacity 3 The units of weight and of measures of capacity, shall be—

for weights the said seer,
for measures of capacity, a measure containing one such seer of water at its maximum density, weighed in a vacuum

4 The [appropriate Government]* may, from time to time, by notification in the [official Gazette]† declare the magnitude and denominations of the weights and measures of capacity other than the said units to be authorised under this Act

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub multiple of one of the units aforesaid

The [appropriate Government]* may, in like manner revoke such notification

Unless it be otherwise ordered in any such notification, the subdivisions of all such weights and measures of capacity shall be expressed in decimal parts

5 The [appropriate Government]* may, from time to time, by notification in the [official Gazette],† define the limits of districts for the purposes of this Act

The [appropriate Government]* may from time to time, by notification in the official Gazette, define the limits of sub districts for the purposes of this Act

6 The [appropriate Government]* may provide, for such districts as it thinks fit, proper primary standards and sets of the said authorised weights and measures of capacity

Such standards shall, for the purposes of this Act, be deemed the standards for such districts

7 The [appropriate Government]* may provide, for such sub-districts as it thinks fit, copies of such of the said authorised weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts

Such local standards shall be deemed correct, until they are proved to be otherwise

III—Use of new Weights and Measures of Capacity

8 Whenever the [appropriate Government]* considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government

Use of new weights and measures of capacity in Government offices etc

office or municipal body or railway company, the [appropriate Government]* may, by notification in the [official Gazette],† direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorised as aforesaid shall be used in dealings and contracts by such office, body or company, and may, in like manner, from time to time, alter or revoke such direction

9 After the date fixed in any notification under section eight, all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such offices, bodies or companies

IV—Wardens

10 The [appropriate Government],* shall appoint Wardens for the custody of the primary and local standards and sets of authorised weights and measures of capacity hereinbefore mentioned

The [appropriate Government]* may, at any time, suspend or remove any such Warden and appoint another

11 The [appropriate Government]* may, from time to time, make rules consistent with this Act for regulating the following matters:—

- (a) The appointment of Wardens,
- (b) The guidance of Wardens in all matters connected with the performance of their duties,
- (c) The provision, replacement, custody and use of the standards,
- (d) The method of verifying local standards and weights, weighing machines and measures of capacity authorised under this Act, and balances, and of certifying such verification provided that such verification shall not be required to be made oftener than once in two years,
- (e) The errors which may be tolerated in weights, weighing machines, and measures of capacity authorised under this Act, and in balances,
- (f) The shapes, proportions and dimensions to be given to weights, weighing machines and measures of capacity authorised under this Act, and to balances, and the materials of which they may be made,
- (g) Marking weights and measures of capacity authorised under this Act with their several denominations,
- (h) The conditions under which Government offices, municipal bodies and railway companies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorised under this Act, and of the balances used by them,
- (i) The fees to be paid for verifying, correcting and certifying

* In 1937, the word "Government" was substituted for "the appropriate Government".
 † In 1937, the words "the official Gazette" were substituted for "the official Gazette of India".

the verification of weights, weighing machines and measures of capacity authorised under this Act, and of balances

Publication of rules **12** Such rules shall be published in the [official Gazette] *

And the [appropriate Government]† may, by notification in the [official Gazette] * declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body or railway company and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law

13 All officers of Government, municipal officers and officers and servants of railway companies shall comply with such rules so far as they concern them and pay such fees as the said rules shall prescribe

14 The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction which appears to him unfit for verification or correction

15 Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the [appropriate Government]† may, from time to time, appoint

16 Whoever knowingly counterfeits any mark used by a Warden under section eleven, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine

17 The [appropriate Government]† may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorised under this Act, in terms of the weights and measures of capacity so authorised, and the equivalents so stated after notification in the [official Gazette] * shall be deemed the true equivalents

[18 In this Act the "appropriate Government" means in relation to standards of weight, the Central Government, and in relation to measures of capacity, the Provincial Government.] †

Definition of appropriate Government

1937
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1937
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section is not in force

Order of
17
Order of
137
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THE WHIPPING ACT (IV OF 1909)

CONTENTS

PREAMBLE SECTION

SECTION

- 1 Short title and extent
- 2 Whipping added to punishments described in Act XLV 1860
- 3 Offences punishable with whipping in lieu of other punishment
- 4 Offences punishable with whipping in lieu of or in addition to other punishment

- 5 Juvenile offenders when punishable with whipping
- 6 Special provision as to punishment with whipping in frontier districts
- 7 Amendment of Section 292 Act V 1898
- 8 [Repealed]

THE WHIPPING ACT, 1909

(ACT NO. IV OF 1909)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the Governor-General's assent on the 22nd March, 1909)

An Act to consolidate and amend the law relating to the punishment of whipping

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping It is hereby enacted as follows —

Short title and extent **1** (1) *This Act may be called the Whipping Act, 1909 and*

*[(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas]**

Scope and construction of the Act — The special laws contemplated in ss 40 and 41

Whipping Act is a highly penal enactment it must be construed in the sense most favourable to the subject *Ibid*

Application of the Act — This Act applies to offences under the Penal Code only U B R (1897 1901) Vol 1 392 The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of the enactment of Act VI of 1861 (the Whipping Act 1861) and s 46 of the Code of Criminal Procedure (1861) is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form 15 W R Cr 80-7 B L R (F B) 165

Whipping added to punishments described in Act XLV, 1860

2 In addition to the punishments described in section 53 of the Indian Penal Code,† offenders are also liable to the punishment of whipping

Offences punishable with whipping in lieu of other punishment

3 Whoever commits any of the following offences, namely —

(a) theft as defined in section 378 of the Indian Penal Code† other than theft by a clerk or servant of property in possession of his master

* In Burma sub section (2) has been omitted by C B Order of 1937
† Act XLV of 1860

(b) theft in a building, tent or vessel as defined in section 380 of the said Code,

(c) theft after preparation for causing death or hurt as defined in section 382 of the said Code*,

(d) lurking house-trespass or house breaking as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section

(e) lurking house trespass by night or house breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code

Scope—This section refers to the commission of the offences not to attempt to commit offences U B R (1892 93) Vol I 332 L B R (1872 92) 393 7 L B R 63 12 C P L R 1 Cr In the case of adults on a first conviction or in the case of juvenile offenders whether for a first or any other offence whipping can be only in lieu of any other punishment W R 1864 Cr 88 3 B H C Cr 38 A sentence of fine or imprisonment in addition to whipping under this section is illegal U B R (1897 1901) Vol I 891 Rat Un Cr C 561 16 B 357 In lieu of punishing an offender with imprisonment and fine a Court can punish him with whipping alone But it cannot add thereto a sentence of fine also 25 Cr L J 1185=82 Ind Cas 491-20 L W 881=1925 Mad 183

The word punishment as used in this section means the total of punishments awardable for the offence otherwise it would be possible to substitute a whipping for the fine and to inflict imprisonment in addition 11 C P L R 13 Cr In this section which contains no mention of s 53 of I P Code the word punishment is used in a different sense from the word punishments in the preceding section and may be interpreted to mean the total punishment awardable i.e., in a case under s 379 I P C imprisonment and whipping So, if the sentence of whipping is inflicted under this section no other punishment as prescribed by the Penal Code either imprisonment or fine or both can be legally inflicted 16 B 357

Under the section a sentence of whipping may be passed in lieu of any punishment

stripes cannot be added to a sentence of imprisonment and fine 1 Luck C 688

Offences punishable with whipping in lieu of or in addition to other punishment

4 Whoever—

(a) abets, commits or attempts to commit rape as defined in section 375 of the Indian Penal Code, *

(b) compels or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code,

(c) voluntarily causes hurt in committing or attempting to commit robbery as defined in section 390 of the said Code

(d) commits dacoity as defined in section 391 of the said Code, may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code

Notes—This Act is not a special law 22 Ind Cas 117

Under this section of the Whipping Act a sentence of whipping may be imposed where in the commission of a robbery hurt is caused. It should be inflicted in cases of offence well as

Clause (6) — *Ide A I R 1932 Sind 143*

5 any juvenile offender who abets, commits or attempts to commit—
Juvenile offenders when punishable with whipping

(a) any offence punishable under the Indian Penal Code * except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or

(b) any offence punishable under any other law with imprisonment which the [Provincial Government]† may, by notification in the [official Gazette]‡ specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt, be liable

Explanation — In this section the expression 'juvenile offender' means an offender whom the Court after making such inquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive

Scope — Section 5 does not supersede s 4 but is applicable alternately with ss 3 and 4. 13 P L T 573 A I R 1932 Pat 331 In this section whipping is in lieu of punishment A I R 1934 All 976

Exp'nation — A juvenile offender is accused is final under the explanation out no other punishment can be awarded L J 539 The word Court includes an Appellate Court 27 A L J 221

6 Whenever [any provincial Government]§ has, by notification in the [official Gazette]‡, declared the provisions of this section to be in force in any frontier district or any wild tract of country [within the jurisdiction of such Provincial Government]|| any person who in such district or tract of country, after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code

Amendment of section 302 Act V of 1898

7 [Repealed by Act I of 1938]

8 [Repealed by Act 17 of 1914]

THE SCHEDULE

[Repealed by Act 17 of 1914]

* Act XLV of 1860

† In British India the words within brackets have been substituted by C I Order of 1937
‡ G B Order of 1937
§ C I Order of 1937
|| G I Order of 1937
§ C B Order of 1937
|| G I Order of 1937
|| G B Order of 1937
|| G I Order of 1937
|| G B Order of 1937

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, (V OF 1913)

CONTENTS

PREAMBLE

SECTION

- 1 Short title, extent and commencement
- 2 Definition
- 3 Prohibition of importation by addition to section 18, Act VIII of 1878

SECTION

- 4 Prohibition of use of white phosphorus in manufacture of matches
- 5 Power of Inspector of Factories to take samples of materials used in manufacture
- 6 Prohibition of sale

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1913

(ACT NO V OF 1913)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 7th March, 1913)

An Act to prohibit the importation, manufacture and sale of matches made with white phosphorus

WHEREAS it is expedient to prohibit the importation, manufacture and sale of matches made with white phosphorus, It is hereby enacted as follows —

Short title extent and commencement

1 (i) This Act may be called the White Phosphorus Matches Prohibition Act, 1913

[(2) It extends to the whole of British India,]* and

(3) It shall come into force on the first day of July, 1913, with the exception of section 6, which shall come into force on the first day of July, 1914

Definition

2 In this Act, 'white phosphorus' means the substance commonly known as white or yellow phosphorus

Prohibition of importation by addition to section 18 Act VIII of 1878

3 [Repealed by Act I of 1938]†

Prohibition of use of white phosphorus in manufacture of matches

4 (1) No person shall use white phosphorus in the manufacture of matches.

(2) Any person who uses, or permits the use by any person under his control of white phosphorus in the manufacture of matches, shall be punishable with fine which may extend to two hundred rupees

5 (1) Every person who manufactures matches shall allow an Inspector of Factories appointed under the Indian Factories Act, 1911,‡ at any time to take for analysis sufficient samples of any material in use, or mixed for use, in such manufacture

Power of Inspector of Factories to take samples of material used in manufacture

* In Burma the words within brackets have been omitted by G. O. B. Order of 1937
 † In Burma read section 3 as follows — 3 To section 18 of Sea Customs Act, 1878 the following clause shall be added namely, '(g) matches made with white phosphorus'
 ‡ Act XII of 1911

Provided that any such person may, at the time the sample is taken, and on providing the necessary appliances, require the Inspector to divide the sample so taken into two parts, and to mark, seal and deliver to him one part.

(2) Any person who refuses to permit any such Inspector of Factories as aforesaid to take a sample, in accordance with the provisions of sub-section (1), shall be punishable with fine which may extend to two hundred rupees

6. (1) No person shall sell, or offer or expose for sale, or have in his possession or under his control, any matches made with white phosphorus.

(2) Any person who contravenes the provisions of sub-section (1) may, on complaint to a [Presidency Magistrate],* Sub-Divisional Magistrate or Magistrate of the first class, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the Magistrate may direct

THE WILD BIRDS AND ANIMALS PROTECTION ACT (VIII OF 1912.)

CONTENTS.

PREAMBLE.

SECTION.

- 1 Short title and extent
- 2 Application of Act
- 3 Close time
- 4 Penalties

SECTION.

- 5 Confiscation
- 6 Cognizance of offences
- 7 Power to grant exemption.
- 8 Savings
- 9 [Repeal]

THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912.

(ACT NO. VIII OF 1912.)

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the Governor-General's assent on the 18th September, 1912)

An Act to make better provision for the protection and preservation of certain wild birds and animals

WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals, It is hereby enacted as follows —

1. (1) This Act may be called the
Short title and extent Wild Birds and Animals Protection Act,
1912, and

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas and the Pargana of Sipit

2. (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule, when in their wild state
Application of Act

(2) The [Provincial Government]† may, by notification in t

* In Burma the words within brackets have been omitted by G. B. Order of 1

† In British India the words within brackets have been substituted by G. I., 1937. In Burma for these words, read "Governor," vide G. B. O.

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, (V OF 1913)

CONTENTS

PREAMBLE

SECTION

SECTION

- | | |
|--|--|
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| 3 Prohibition of importation by addition to section 18, Act VIII of 1878 | 6 Prohibition of sale |

THE WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1913

(ACT NO V OF 1913)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 7th March, 1913)

An Act to prohibit the importation manufacture and sale of matches made with white phosphorus

WHEREAS it is expedient to prohibit the importation, manufacture and sale of matches made with white phosphorus, It is hereby enacted as follows —

Short title extent and commencement

1 (1) This Act may be called the White Phosphorus Matches Prohibition Act, 1913

[(2) It extends to the whole of British India,]* and

(3) It shall come into force on the first day of July, 1913, with the exception of section 6, which shall come into force on the first day of July, 1914

Definition

2 In this Act, "white phosphorus" means the substance commonly known as white or yellow phosphorus

Prohibition of importation by addition to section 18, Act VIII of 1878

3 [*Repealed by Act I of 1938*][†]

Prohibition of use of white phosphorus in manufacture of matches

4 (1) No person shall use white phosphorus in the manufacture of matches

(2) Any person who uses, or permits the use by any person under his control of white phosphorus in the manufacture of matches shall be punishable with fine which may extend to two hundred rupees

5 (1) Every person who manufactures matches shall allow an Inspector of Factories appointed under the Indian Factories Act, 1911[‡] at any time to take for analysis sufficient samples of any material in use, or mixed for use, in such manufacture

* In Burma the words within brackets have been omitted by G B Order of 1937
[†] In Burma read section 3 as follows — 3 To section 18 of Sea Customs Act, 1878, the following clause shall be added namely, '(g) matches made with white phosphorus' ; Act VII of 1911

Provided that any such person may, at the time the sample is taken, and on providing the necessary appliances, require the Inspector to divide the sample so taken into two parts, and to mark, seal and deliver to him one part

(2) Any person who refuses to permit any such Inspector of Factories as aforesaid to take a sample, in accordance with the provisions of sub-section (1), shall be punishable with fine which may extend to two hundred rupees

6 (1) No person shall sell, or offer or expose for sale, or have in his possession for the purposes of sale, any matches made with white phosphorus

(2) Any person who contravenes the provisions of sub section (1) may, on complaint to a [Presidency Magistrate],* Sub-Divisional Magistrate or Magistrate of the first class, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the Magistrate may direct

THE WILD BIRDS AND ANIMALS PROTECTION ACT (VIII OF 1912)

CONTENTS

PREAMBLE

SECTION

SECTION

- 1 Short title and extent
- 2 Application of Act
- 3 Close time
- 4 Penalties

- 5 Confiscation
- 6 Cognizance of offences
- 7 Power to grant exemption
- 8 Savings
- 9 [Repeal]

THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912

(ACT NO VIII OF 1912)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the Governor-General's assent on the 18th September, 1912)

An Act to make better provision for the protection and preservation of certain wild birds and animals

WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals It is hereby enacted as follows —

1 (1) This Act may be called the
Short title and extent Wild Birds and Animals Protection Act,
1912, and

(2) It extends to the whole of British India, including British Baluchistan the Santhal Parganas and the Pargana of Spiti

2 (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule when in
Application of Act their wild state

(2) The [Provincial Government]† may, by notification in the

* In Burma the words within brackets have been omitted by G. O. Order of 1937

† In British India the words within brackets have been substituted "G. O. Order of 1937" In Burma for these words read the word Governor vide G. O. Order of 1937

[official Gazette]* apply the provisions of this Act to any kind of wild bird or animal, other than those specified in the Schedule, which, in its opinion, it is desirable to protect or preserve

3 The [Provincial Government]† may, by notification in the [official Gazette],* declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies, or for female or immature wild birds or animals of such kind, and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notification it shall be unlawful—

(a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time

(b) to sell or buy, or offer to sell or buy, or to possess, any such bird or animal which has not been captured or killed before the commencement of such close time or the flesh thereof,

(c) if any plumage has been taken from any such bird captured or killed during such close time to sell or buy, or to offer to sell or buy, or to possess such plumage

4 (1) Whoever does or attempts to do, any act in contravention of section 3, shall be punishable with fine which may extend to fifty rupees

(2) Whoever, having already been convicted of an offence under this section is again convicted thereunder shall on every subsequent conviction be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both

Notes.—To convict the accused under this section it is necessary to prove that he had either killed or attempted to kill one of the animals or birds mentioned in the Schedule to the Act 29 Cr L J. 238=107 Ind Cas 238

5 (1) When any person is convicted of an offence punishable under this Act the convicting Magistrate may direct that any bird or animal in respect of which such offence has been committed, or the flesh or any other part of such bird or animal shall be confiscated

(2) Such confiscation may be in addition to the other punishment provided by section 4 for such offence

6 No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence against this Act

7. Where the [Provincial Government]† is of opinion that, in the interest of scientific research, such a course is desirable, it may grant to any person a licence, subject to such restrictions and conditions as it may impose entitling the holder thereof to do any act which is by section 3 declared to be unlawful

* In British India the —

1937
† In

31 Order of
of 1937
1 Order of
of 1937

8 Nothing in this Act shall be deemed to apply to the capture or killing of a wild animal by any person in defence of himself or any other person, or to the capture or killing of any wild bird or animal in *bona fide* defence of property

9 [Repeal]—*Repealed by Act XVII of 1914*

THE SCHEDULE

(i) Bustards, ducks, floricans, jungle-fowl partridges, peafowl, pheasants, pigeons, quail, sand grouse, painted snipe, spurfowl, wood cock, herons, egrets, rollers and king-fishers

(ii) Antelopes, asses, bisons, buffaloes, deer, gaxelles goats, hares, oxen, rhinoceroses and sheep

THE INDIAN WIRELESS TELEGRAPHY ACT, (XVII OF 1933)

CONTENTS

PREAMBLE

SECTION

- 1 Short title extent and commencement
- 2 Definitions
- 3 Prohibition of possession of wireless telegraphy apparatus without licence
- 4 Power of Central Government to exempt persons from provisions of the Act
- 5 Licences
- 6 Offence and penalty

SECTION

- 7 Power of search
- 8 Apparatus confiscated or having no owner to be property of Central Government
- 9 Power of Court to direct payment of fines to prescribed authority
- 10 Power of Central Government to make rules
- 11 Saving of Indian Telegraph Act 1885

THE INDIAN WIRELESS TELEGRAPHY ACT, 1933. (ACT NO XVII OF 1933)

(Received the assent of the Governor General on the 11th September, 1933)

An Act to regulate the possession of wireless telegraphy apparatus

[WHEREAS it is expedient to regulate the possession of wireless telegraphy apparatus in British India, It is hereby enacted as follows —]*

Notes—An important source of revenue to the Indian State Broadcasting Service is the fees on licences for wireless apparatus. These licences are issued under the Indian Telegraph Act which however only gives power to control establishment maintenance and working of such apparatus in British India. The detection of unlicensed apparatus and the successful prosecution of the offenders is therefore difficult in practice as it is first necessary to locate unlicensed apparatus and then to prove that it has actually been established maintained and worked. It is believed that the revenue lost at present owing

Short title, extent and commencement

[1 (1) This Act may be called the Indian Wireless Telegraphy Act, 1933

(2) It extends to the whole of British India including British Baluchistan and the Santhal Parganas

* In the preamble has been

(3) It shall come into force on such date as the "Central Government" * may, by notification in the 'official Gazette,'* appoint] †

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "wireless communication" means the making, transmitting or receiving of telegraphic, telephonic or other communications by means of electricity or magnetism without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus,

(2) "wireless telegraphy apparatus" means any apparatus appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made under section 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted nor any article determined by rule made under section 10 not to be wireless telegraphy apparatus, and

(3) 'prescribed' means prescribed by rules made under section 10

Notes—The definition of 'wireless telegraphy apparatus' provides for the inclusion in that term of articles specifically declared by rule to be wireless telegraphy apparatus—*Notes on Clauses*

Prohibition of possession of wireless telegraphy apparatus without licence

3. Save as provided by section 4 no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act

Notes—Clause 3 prohibits the possessions without licence of wireless telegraphy apparatus or its use—*Notes on Clauses*

4 The [Central Government]‡ may by rules made under this Act exempt any person or any class of persons from the provisions of this Act either generally or subject to prescribed conditions, or in respect of specified wireless telegraphy apparatus

Power of Central Government to exempt persons from provisions of the Act

omit in proper cases of wireless telegraphy act under the Indian—*Notes on Clauses*

5 The telegraph authority constituted under the Indian Telegraph Act, 1885 § shall be the authority competent to issue licences to possess wireless telegraphy apparatus under this Act, and may issue licences in such manner, on such conditions and subject to such payments as may be prescribed

Licences

of 1933 In the words within quotations have been substituted by G O Order

† In Burma for section 1 read the following—

of 1933 This may be called the Burma Wireless Telegraphy Act—*Notes on Clauses*

107 In British India the words within brackets have been substituted by G O Order of 1933 In Burma these words read the word 'Governor'—*Notes on Clauses*

Notes—Clause 5 makes the Director General of Posts or Telegraphs or an officer empowered by him the licensing authority—*Notes on Clauses*

6 (1) Whoever possesses any wireless telegraphy apparatus in contravention of the provisions of section 3 shall be punished in the case of the first offence, with fine which may extend to one hundred rupees, and in the case of a second or subsequent offence with fine which may extend to two hundred and fifty rupees

(2) For the purposes of this section a Court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge, or is located in any premises or place over which he has effective control

(3) If in the trial of an offence under this section the accused is convicted, the Court shall decide whether any apparatus in respect of which an offence has been committed should be confiscated, and, if it so decides, may order confiscation accordingly

Notes—Clause 6 penalises possession without licence and provides for the confiscation of apparatus in respect of which an offence is committed—*Notes on Clauses*

In deference to the opinion expressed in the debate on the motion to refer the Bill to Select Committee that in view of the provisions for confiscation contained in this clause the penalty here laid down are unduly severe We have reduced the amount of the fine

e that confiscation

the Broadcasting service should extend to fines imposed for breaches of the rules We have accordingly amended sub clause (4) of this clause as introduced and have placed it in a more appropriate position as a separate clause numbered clause 9—*Report of the Select Committee*

7 (1) A [Presidency Magistrate, or a]* Magistrate of the first class or a Magistrate of the second class specially empowered by the [Central Government]† in this behalf may issue a warrant for the search, at any time between sunrise and sunset of any building vessel or place in which he has reason to believe that any wireless telegraphy apparatus, in respect of which an offence punishable under section 6 has been committed is kept or concealed

(2) The officer to whom a search warrant under sub section (1) is addressed may enter into any building vessel or place mentioned in the warrant and seize any wireless telegraphy apparatus in respect of which he has reason to believe an offence under section 6 has been committed

Notes—Clause 7 provides the power of search necessary for the enforcement of the Act—*Notes on Clauses*

We have amended the clause so as to restrict the power of search to the making of searches by day only—*Report of the Select Committee*

8 All wireless telegraphy apparatus confiscated under the provisions of sub section (3) of section 6, and all wireless telegraphy apparatus having no ostensible owner shall be the property of the [Central Government]‡

Notes—Clause 8 supplements the provisions for confiscation contained in clause 6 and provides that apparatus having no ostensible owner shall be the property of Government—*Notes on Clauses*

* In Burma the word with brackets have been omitted by C. I. Order of 1933

† In British India the words with brackets have been substituted by C. I. O. 1937 In Burma for these words read "The Governor" by C. I. Order of

9 [Omitted]*

Power of Central Government to make rules

10 The [Central Government]† may, by notification in the [official Gazette]‡ make rules for the purpose of carrying into effect the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for —

(i) determining that any article or class of articles shall be or shall not be wireless telegraphy apparatus for the purposes of this Act

(ii) the exemption of persons or classes of persons under section 4 from the provisions of this Act

(iii) the manner of and the conditions governing the issue, renewal, suspension and cancellation of licences, the form of licences, and the payments to be made for the issue and renewal of licences,

(iv) the maintenance of records containing details of the acquisition and disposal by sale or otherwise of wireless telegraphy apparatus possessed by dealers in wireless telegraphy apparatus,

(v) the conditions governing the sale of wireless telegraphy apparatus by dealers in and manufacturers of such apparatus, and

(vi) determining the authority referred to in section 9

(3) In making a rule under this section the [Central Government]† may direct that breach of it shall be punishable with fine which may extend to one hundred rupees

Notes — Clause 9 (now clause 10) contains the necessary rule making power — *Notes on Clauses*

We have inserted a new entry in sub clause (2) to give power to make a rule requiring a dealer or manufacturer to insist on the production of a licence by an intending purchaser in proper cases — *Report of the Select Committee*

11 Nothing in this Act contained shall authorise the doing of anything prohibited under the Indian Telegraph Act, 1885 and no licence issued under this Act shall authorise any person to do anything for the doing of which a licence or permission under the Indian Telegraph Act, 1885, is necessary

Notes — Clause 10 (now clause 11) saves the provisions of the Indian Telegraph Act 1885 from the operation of the Act — *Notes on Clauses*

* In British India s 9 has been omitted as it was declared by G. I. Order of 1937 to be effect. Section 9 shall cease to have effect. But in Burma this section which runs as follows is in force —

9 A Court inflicting a fine as punishment for any offence under section 6 or under the rules made under section 10 may direct that the lower of Court to direct pay the rules made under section 10 may direct that the amount of fines to be prescribed authority

† In British India s 9 has been omitted as it was declared by G. I. Order of 1937 to be effect. Section 9 shall cease to have effect. But in Burma this section which runs as follows is in force —

G. I. Order of 1937
Order of 1937

THE INDIAN WORKS OF DEFENCE ACT (VII OF 1903)

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THE INDIAN WORKS OF DEFENCE ACT, 1903.

(ACT NO. VII OF 1903.)

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 20th March, 1903)

AN Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition

WHEREAS it is expedient to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and

obstructions, and for determining the amount of compensation to be made on account of such impositions; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title and extent

[1 (1) This Act may be called the Indian Works of defence Act, 1903, and (2) it extends to the whole of British India, including British Baluchistan, the Santhal Parganas and the Paragana of Spiti]*

Definitions

2 In this Act, unless there is something repugnant in the subject or context,—

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

(c)† the expression "District" means one of the Districts into which India is, for military purposes for the time being, divided, it includes a Brigade Area which does not form part of any District, and any area which the [Central Government]‡ may, by notification in the [official Gazette]‡, declare to be a District for all or any of the purposes of this Act "

(d)† the expression "General Officer Commanding the District" means "the officer for the time being in command of the forces in a District "

(e) the expression "Commanding Officer" means the officer for the time being in command of a work of defence.

(f) the expression "Collector" includes any officer specially appointed by the [Central Government]§ to perform the functions of a Collector under this Act

(g) the expression "Court" means a principal Civil Court of original jurisdiction, unless the [Central Government]‡ has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act

(h) "maintain," with its grammatical variations and cognate expressions does not, when used in relation to a house or other construction, include the doing of any act necessary for keeping such

* In Burma for section I. read "1. This Act may be called the Works of Defence

house or construction, until the making of the award referred to in section 12 or until the exercise, prior to the making of the award, of the powers of demolition conferred in case of emergency, by section 6 sub-sections (1) and (3), in the state in which it was at the time of the publication of the notice referred to in section 3, sub section (2)

(i) the following persons shall be deemed "entitled to act" as and to the extent hereinafter provided, that is to say —

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability

a married woman in cases to which the English law is applicable, shall be deemed the person so entitled to act and, whether of full age or not, to the same extent as if she were unmarried and of full age and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted

Provided—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter is shown to the satisfaction of the Collector or Court to be *adverse to the interest of the person interested* for whom he would otherwise be entitled to act,

(ii) in every case the person interested may appear by a next friend or in default of his appearance by a next friend, the Collector or Court, as the case may be shall appoint a guardian for the case to act on his behalf in the conduct thereof

(iii) the provisions of Chapter XXXI, of the Code of Civil Procedure* shall *mutatis mutandis* apply in the case of persons interested appearing before a Collector or Court by a next friend or by a guardian for the case in proceedings under this Act and

(iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land upon the use and enjoyment of which restrictions are to be imposed and received and give a good discharge for the purchase money on a voluntary sale

PART II

IMPOSITION OF RESTRICTIONS

3 (1) Whenever it appears to the [Central Government]† that it

is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions a declaration shall be made to that effect [under the

* Act XIV of 1881. Now see Act V of 1903

† In British India the words within brackets have been substituted by G. I. Order 1937. In Burma for the words read the word Governor vide G. E. Order of 1900

signature of a Secretary to such Government or of some officer duly authorised to certify its orders]*

(2) The said declaration shall be published in the [official Gazette]† and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7 may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions

4 It shall be lawful for such officer as the [Central Government]‡ may by general or special order, authorise in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving-such occupier at least seven days' notice in writing of his intention to do so

5 The officer so authorised shall at the time of such entry pay Payment for damage or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue officer of the district, and such decision shall be final

6 (1) Whenever a declaration has been made and public notice thereof has been given under section 3 Further powers exercisable after publication of notice under section 3 sub section (2) it shall subject to the provisions of sub-sections (2) to (4) be lawful for such officer as the [Central Government]‡ may, by general or special order, authorise in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to

* In Burma the words within brackets have been omitted by G. O. Order of 1937
† In B. I. A. V. C. I. Order of 1937

remove or alter all or any of the banks fences, hedges, and ditches, to make under-ground and other drains, to fill up all excavations and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved

(2) The powers conferred by sub-section (1) shall not be exercised,—

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them

(3) In case of emergency, the [Central Government]* may, by notification in the [official Gazette],† declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing wholly or in part, any building or other obstruction maintained, created added to, altered, planted, stacked stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder, or of any condition prescribed in accordance therewith

7 From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the [Central Government]* may in its discretion declare therein shall attach with reference to such land, namely —

(a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,—

(1) no variation shall be made in the ground-level, and no building wall, bank or other construction above the ground shall be maintained, erected, added to, or altered otherwise than with the written approval of the "General Officer Commanding the District,"‡ and on such conditions as he may prescribe.

(ii) no wood, earth, stone, brick, gravel sand or other material shall be stacked stored or otherwise accumulated

Provided that, with the written approval of the 'General Officer Commanding the District'‡ and on such conditions as he may

* In

1937

† In

1937

‡ In

1921. In Burma these words have been omitted by G. B. Order of 1921.

prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition

Provided, also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce without compensation, on the requisition of the Commanding Officer,

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf in the case of land under the control of military authority, by the Commanding Officer and, in other cases by the Collector with the concurrence of the Commanding Officer, and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this subsection to be maintained, erected, added to or altered, repairs shall not, without the written approval of the "General Officer Commanding the District" * be made with materials different in kind from those employed in the original building, wall, bank or other construction

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the following rule (a) shall apply with the

(i) no construction of permanent materials above the ground shall be maintained or erected

Provided that, with the written approval of the "General Officer Commanding the District" * and on such conditions as he may prescribe, huts, fences and other constructions of wood or other materials easily destroyed or removed may be maintained, erected added to or altered

Provided, also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts fences or other constructions without compensation, upon an order in writing signed by the "General Officer Commanding the District", * and

(ii) live hedges rows or clumps of trees or orchards shall not be maintained planted added to or altered otherwise than with the written approval of the "General Officer Commanding the District" * and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work the restrictions enumerated in clauses (a) and (b) shall apply with the

only — on the surface, and no excavation below the surface, shall be maintained or erected

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, open railings and dry brush-wood fences may be exempted from this prohibition

* The words within quotation have been substituted by Act XI of 1921 in British India. In Burma these words have been omitted by G. O. Order of 1937.

8 As soon as may be, after the publication of the declaration aforesaid, the Collector shall cause the land to be marked out and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every building, tree and other obstruction

9 (1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in section 3, or

(b) such other period not exceeding three years from the said publication as the [Central Government]* may, by notification in the [official Gazette]† direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business

10 The Collector may also require any such person to make or deliver to him at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement containing so far

Power to require and enforce the making of statements as to names and interests

* In British India the words within brackets have been substituted by G. I. O. 1937 In Burma for these words read the word Governor and G. B. Order of 1937
† In British India the words within brackets have been substituted by G. I. O. 1937 In Burma for these words read the word Gazette and G. B. Order of

as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co proprietor, sub-proprietor mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement

11 Every person required to make or deliver a statement under

Application of certain sections of the Indian Penal Code

section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code *

12 On the day fixed under section 9, or on any other day to

Inquiry and award by Collector

which the inquiry has been adjourned, the Collector shall proceed to enquire into the

objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free,

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7, and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not

13 (1) Such award shall be filed in the Collector's office and shall,

Award of Collector when to be final

except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested,

whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, and the apportionment of the compensation among the persons interested

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made

14 The Collector may, for any cause he thinks fit, from time to

Adjournment of inquiry

time adjourn the inquiry to a day to be fixed by him

15 For the purpose of inquiries under this Act the Collector

Lower to summon and enforce attendance of witnesses and production of documents

shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by

the same means, and (so far as may be) in the same manner, as is

provided in the case of a Civil Court under the Code of Civil Procedure *

Matters to be considered and neglected

16 In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24

17 Whenever the officer exercising the powers conferred by section 6, considers it necessary that anything in respect of which any person is or may be entitled to compensation, but of which no notice has been given or compensation awarded, under sections 9 and 12 respectively, should be done in pursuance of the said powers, the Collector shall cause supplementary notice to be given as nearly as may be, in the manner prescribed by section 9 and subject to the limit of time imposed by sub-section (1) of that section, and the provisions of sections 10 to 16 shall, so far as they are applicable, be deemed to apply to any further inquiry and award which may be held or made in consequence of such supplementary notice

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

18 (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested

Reference to Court

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award,

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13 sub-section (2), or within six months from the date of the Collector's award whichever period shall first expire

(2) The application shall state the grounds on which objection to the award is taken

19 (1) In making the reference the Collector shall state, for the information of the Court, in writing under his hand —

Collector's statement to the Court

(a) the situation and extent of the land with particulars of any damage caused under section 6 or of restrictions imposed under section 7,

(b) the names of the persons whom he has reason to interested in such land ,

* Act XIV of 1882, now Act V of 1903

(c) the amount of compensation awarded under section 12, and,

(d) if the objection be to the amount of the compensation the grounds on which the amount of compensation was determined

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively

20 The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely —

(a) the applicant,

(b) all persons interested in the objection except such (if any) of them as have consented without protest to receive payment of the compensation awarded, and,

(c) if the objection is in regard to the area of the land, the nature of the obstructions or the amount of the compensation, the Collector

21 The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection

22 Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court [in the Province]* shall be entitled to appear, plead and act, as the case may be, in such proceeding

23 (1) In determining the amount of compensation to be awarded for damage caused, or to be caused or for restrictions imposed under this Act, the Court shall take into consideration—

(a) the actual decrease in market-value of the land owing to the publication of the declaration relating thereto under section 3 and any damage caused or to be caused under section 6,

(b) the damage sustained by the person interested, by reason of the removal of any standing crops in the exercise of any power conferred by section 6,

(c) the damage (if any) sustained by the person interested, by reason of ceasing to be able to use such land conjointly with his other land,

(d) the damage (if any) sustained by the person interested by anything done or ordered under sections 6 and 7 injuriously affecting his other property, moveable or immoveable in any other manner, or his earnings, and

(e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change

(2) In addition to the amount representing the actual decrease in the market-value of the land as above provided, the Court shall in every case award a further sum of fifteen per centum on such amount

* In Burma for the words within brackets read British Burma, vide G B Order of 1907

24 In determining the amount of compension to be awarded for damage caused, or to be caused or for restrictions imposed under this Act, the Court shall not take into consideration—

Matters not to be considered in determining compensation

(a) the degree of urgency which has led to the damage or the imposition of restrictions

(b) any disinclination of the person interested to submit to damage or restrictions

(c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit

(d) any increase to the value of the other land of the person interested, accruing or likely to accrue from anything done under this Act or

(e) any outlay or improvements on, or disposal of the land commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 3

25 (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 12

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim the amount awarded to him by the Court shall not be less than and may exceed, the amount awarded by the Collector

26 Every award under this Part shall be in writing signed by the Judge and shall specify the amount awarded under section 23, sub-section (1), clause (a) and also the amounts (if any) respectively awarded under each of the other clauses of the same sub section, together with the grounds of awarding each of the said amounts

Form of awards

27 (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportion they are to be paid

Costs

(2) When the award of the Collector is not upheld the costs shall ordinarily be paid by the Collector, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made, or that he should pay a of the Collector's costs

28 If the sum which, in the opinion of the Court, the Collector ought to have awarded as is in excess of the sum which the Collector did award as compensation the Court may be directed to direct that the Collector shall pay

Collector may be directed to pay interest on excess compensation

on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into Court.

PART IV.

APPORTIONMENT OF COMPENSATION.

29 Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment

30 When the amount of compensation has been settled under section 12, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court

PART V.

PAYMENT.

31 (1) On making an award under section 12 the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2)

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.

Provided, first, that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount

Provided, secondly, that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18

Provided, thirdly, that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the [Central Government,]* instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, or by the remission of land revenue on the same or on other lands held under the same title, or in such

* In British India the words within brackets have been substituted by G I Order of 1937. In Burma for these words read the word "Governor," vide G. O. Order of 1937.

other way as may be equitable having regard to the interests of the parties concerned

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof

32 (1) If any money is deposited in Court under section 31, sub-section (2), and it appears that the land in respect of which the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested—

Investment of money deposited in respect of lands belonging to persons incompetent to alienate

(a) in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money was deposited is held, or,

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as it thinks fit,

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land and such moneys shall remain so deposited and invested until the same are applied—

(i) in the purchase of such other lands as aforesaid, or

(ii) in payment to any person or persons becoming absolutely entitled thereto

(2) In all cases of moneys deposited to which this section applies, the Court shall order the cost of the following matters including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely —

(a) the costs of such investments as aforesaid,

(b) the costs of the orders for the payment of the interest or other proceeds of the securities in which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and the costs of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants

33 If any money is deposited in Court under this Act for any cause other than that mentioned in section 32, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it thinks fit, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect of which such money was deposited or as near thereto as may be

Investment of money deposited in other cases

34 When the amount of any compensation awarded under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at

Payment of interest

per centum per annum from the date of the award until it is so paid or deposited

PART VI

MISCELLANEOUS

35 (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, sub-section (2), by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge

Service of notices.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member can be found the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house and also in some conspicuous part of the land upon which restrictions are to be imposed

Provided that, if the Collector or Judge so directs, a notice may be sent by post in a letter addressed to the person named therein at his last known residence address or place of business and service of it may be proved by the production of the addressee's receipt.

Penalties.

36 Whoever wilfully—

(a) obstructs any person in doing any of the acts authorised by section 4, section 6 or section 8, or

(b) destroys, damages, alters or otherwise interferes with the ground-level or any work done under section 6, or

(c) contravenes any of the provisions of section 7 or any condition prescribed thereunder,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence, and any expenses incurred in removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines

37 If the Collector or officer authorised under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall if a Magistrate, enforce compliance, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, and Bombay * to the Commissioner of Police,

Magistrate to enforce the terms of the Act

* In British India the words 'towns of Calcutta, Madras and Bombay' have been substituted by G. I. Order of 1937. In Burma for these words read 'Rangoon,' vide G. O. Order of 1937.

and such Magistrate or Commissioner (as the case may be) shall enforce compliance

38 (1) The [Central Government]* shall be at liberty to withdraw from the imposition of any declared restrictions before any of the measures authorised by section 6 have been taken

Completion of imposition of restrictions not compulsory, but compensation to be awarded when not completed

(2) Whenever the [Central Government]* withdraws the imposition of any declared restrictions, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said restrictions

(3) The provisions of Part III shall apply, so far as may be, to the determination of the compensation payable under this section

39 (1) The provisions of this Act shall not be put in force for the purpose of demolishing or acquiring the right to demolish a part only of any house, manufactory or other building if the owner

Demolition of part of house or building and imposition of restrictions on part of land.

desires that the whole of demolished or that the acquired

Provided that the owner may at any time before the Collector has made his award under section 12, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be demolished, or that the right to demolish the

as to whether any demolished under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and such building or other construction shall not be demolished until after the question has been determined

In deciding on such a reference the Court shall have regard to the question whether the building or other construction proposed to be demolished is reasonably required for the full and unimpaired use of the house, manufactory or building

(2) If, in the case of any claim of the kind referred to in section 23, sub-section (1), clause (c), by a person interested, on account of ceasing to be able to use the land, upon the use and enjoyment of which restrictions are to be imposed, conjointly with his other land, the [Central Government]* is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the imposition of restrictions upon the whole of the land of which the land upon the use and enjoyment of which it was first sought to impose restrictions forms a part

(3) In the case provided for by sub-section (2) no fresh acquisition

* In British India the words within brackets have been substituted by 1937. In Burma for these words read the word Governor, rule G D

or other proceeding under sections 3 to 10 shall be necessary, but the Collector shall without delay furnish a copy of the order of the [Central Government]* to the person interested, and shall thereafter proceed to make his award under section 12

(4) Notwithstanding anything contained in section 7, clause (a), any land, upon the use and enjoyment of which restrictions are imposed under this section may be included in the outer boundary even though its distance from the crest of the outer parapet of the work exceeds two thousand yards

40 No award or agreement made under this Act shall be charge-
 Exemption from stamp duty and fees able with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same

41 No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends

42. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure† shall apply to all proceedings before the Court under this Act

43 Subject to the provisions of the Code of Civil Procedure† applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceeding under this Act

44 (1) The [Central Government]* may make rules for the guidance of officers in all matters connected with the enforcement of this Act

Power to make rules

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication

(3) All rules made under sub section (1) shall be published in the [official Gazette],‡ and shall thereupon have effect as if enacted in this Act.

END OF VOL I

* In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Governor, title G. I. Order of 1937

† Act IV of 1882

‡ In British India the words within brackets have been substituted by G. I. Order of 1937. In Burma for these words read the word Gazette title G. I. Order of 1937

